

SUPREME COURT
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 117

DORA STEWART LEWIS, MARY WASHINGTON
STEWART BORIE AND PAULA BROWNING
DENCKLA, PETITIONERS,

vs.

ELIZABETH DONNER HANSON, AS EXECUTRIX
AND TRUSTEE UNDER THE LAST WILL OF DORA
BROWNING DONNER, DECEASED, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
THE STATE OF DELAWARE

PETITION FOR CERTIORARI FILED MAY 7, 1957
CERTIORARI GRANTED JUNE 17, 1957

INDEX

	Original	Print
Proceedings in the Supreme Court of the State of Delaware		
Docket entries	A	b
Præcipe	F	d
Citations and sheriff's returns	J	g
Appellant's appendix—see separate index		
Excerpts from affidavit of C. Kenneth Baxter, dated November 12, 1954 (copy) (omitted in printing)	203	A203
Motion of Robert B. Walls, Jr., guardian ad litem for leave to file joint briefs with appellants and order thereon	205	A203
Order assigning Associate Judge Caleb R. Layton, III, etc.	209	A204
Order rescinding the assignment of Judge Caleb R. Layton, III and naming Judge James B. Carey, etc.	210	A205
Motion to remand	211	A205
Opinion of Supreme Court of Florida, Hobson, J., dated September 19, 1956	214	A207
Stipulation pertaining to remand and order thereon	227	A218
Stipulation pertaining to Florida order denying petition for rehearing and order granting stay	229	A220
Order of the Supreme Court of Florida granting a stay, dated November 28, 1956	231	A221
Order of the Supreme Court of Florida denying a petition for rehearing, dated November 28, 1956	232	A222
Opinion, Wolcott, J.	235	A222
Petition for re-argument or in the alternative, a petition for a stay of mandate	270	A245
Order staying mandate	275	A248
Clerk's certificate	277	
Stipulation filed in U.S. Supreme Court re the inclusion of additional parts of the record	276	A249
Affidavit of Paul D. Lovett, dated November 12, 1954 filed in The Court of Chancery of the State of Delaware in and for New Castle County	279	A252
Exhibit A—Trust agreement between Elizabeth Donner Hanson and Delaware Trust Company as Trustee for the benefit of Donner Hanson and others, dated November 26, 1948	282	A254
Exhibit B—Trust agreement between Elizabeth Donner Hanson and Delaware Trust Company for the benefit of Joseph Donner Winsor and others, dated November 26, 1948	291	A262
Exhibit C—Trust agreement between William H. Donner and Montreal Trust Company, dated August 6, 1940 for the benefit of Katherine N. R. Denckla Ordway and others with the following attachments	299	A270
Schedule A	311	A283
Letter from Robert N. Donner, John Stewart, and Dora Donner Ide to Montreal Trust Company, dated October 11, 1940	312	A284

	Original	Print
Deed of conveyance of additional securities dated June 26, 1941 from W. H. Donner to Montreal Trust Company, trustee under agreement dated August 6, 1940 with attachment	313	A285
Schedule "A"	315	A288
Letter from Donner Estates, Inc. to Montreal Trust Company, dated June 23, 1941	316	A289
Letter from Donner Estates, Inc. to Delaware Trust Company, dated June 23, 1941	318	A291
Letter from Donner Estates, Inc. to Delaware Trust Company, dated June 23, 1941	319	A292
Letter from Delaware Trust Company to Donner Estates, Inc., dated June 26, 1941	320	A293
Letter from Delaware Trust Company to Montreal Trust Company, dated June 26, 1941	321	A294
Clerk's certificate (omitted in printing)	322	A295
Affidavit of George Ainslie Goad, dated November 10, 1954 filed in the Court of Chancery of the State of Delaware in and for New Castle County	323	A295
Clerk's certificate (omitted in printing)	324A	A297
Affidavit of C. Kenneth Baxter (Paragraphs 10, 11, & 12), dated November 12, 1954 filed in the Court of Chancery of the State of Delaware in and for New Castle County	325	A297
Clerk's certificate (omitted in printing)	331	A299
Petition of Elwyn L. Middleton for order authorizing transfer of money to foreign trustee, verified March 18, 1953, filed in the Court of Chancery of the State of Delaware in and for New Castle County in the case entitled, "In the matter of Dorothy B. R. Stewart, an insane person"	332	A299
Final return of E. Harris Drew, etc. covering the period of June 25, 1952 to December 12, 1952 (omitted in printing)	336	
Order of the County Judges Court in and for Palm Beach County, Florida accepting resignation of Guardian and appointing successor guardian, dated December 22, 1952	343	A302
Letters of guardianship granted to Elwyn L. Middleton	345	A304
Letters of discharge of E. Harris Drew	347	A305
Certification of the Register in Chancery in and for New Castle County	349	A307
Order of The Honorable Collins J. Seitz, Chancellor, dated November 27, 1953 in the Court of Chancery of the State of Delaware in and for New Castle County	350	A308
Certification of the Register in Chancery in and for New Castle County Delaware	353	A311

INDEX

111

	Original	Print
Clerk's certificate (omitted in printing)	354	A311
Affidavit of Paul D. Lovett, dated October 24, 1955 filed in the Court of Chancery of the State of Delaware in and for New Castle County	355	A312
Affidavit of C. Kenneth Baxter, dated October 24, 1955 filed in the Court of Chancery of the State of Delaware in and for New Castle County	357	A313
Clerk's certificate	360	A315
Order allowing certiorari	364	A315

[fol. A]

**IN THE SUPREME COURT OF THE
STATE OF DELAWARE**

No. 8—1956 Term

DORA STEWART LEWIS, MARY WASHINGTON STEWART BORIE
and PAULA BROWNING, Defendants Below, Appellants,

v.

ELIZABETH DONNER HANSON, as Executrix and Trustee
under the Last Will of Dora Browning Donner, de-
and PAULA BROWNING DENCKLA, Defendants Below, Ap-
pellants,

WILMINGTON TRUST COMPANY, a Delaware corporation as
Trustee under three separate Agreements, (1) and (2)
with William H. Donner dated March 18, 1932 and
March 19, 1932, and (3) with Dora Browning Donner
dated March 25, 1935, Defendant below, Appellee,

DELAWARE TRUST COMPANY, a Delaware corporation, as
Trustee under three separate Agreements, (1) with Wil-
liam H. Donner, dated August 6, 1940, and (2) and (3)
with Elizabeth Donner Hanson, both dated November
26, 1948, Defendant below, Appellee,

KATHERINE N. R. DENCKLA, Defendant below, Appellee,
ROBERT B. WALLS, Esquire, Guardian ad litem for DOROTHY
B. R. STEWART, and WILLIAM DONNER DENCKLA, De-
fendant below, Appellee,

ELWYN L. MIDDLETON, Guardian of the property of DOROTHY
B. R. STEWART, a mentally ill person, Defendant below,
Appellee,

EDWIN D. STEELE, JR., Esquire, Guardian ad litem for
JOSEPH DONNER WINSOR, CURTIN WINSOR, JR., and
DONNER HANSON, Defendant below, Appellee,

[fol. B] BRYN MAWR HOSPITAL, a Pennsylvania corpora-
tion, MIRIAM V. MOYER, JAMES SMITH, WALTER HAMIL-
TON, DOROTHY A. DOYLE, RUTH BRENNER and MARY
GLACKENS, Defendants below, Appellees,

LOUISVILLE TRUST COMPANY, a Kentucky corporation, as
Trustee for BENEDICT H. HANSON, and as Trustee under
agreements with William H. Donner, Defendant Below,
Appellee,

WILLIAM DONNER ROOSEVELT, JOHN STEWART and BENEDICT
H. HANSON, Defendants Below, Appellees.

DOCKET ENTRIES

- A. 1956, February 15: Received and filed praeceipe on appeal from all of the judgment of the Court of Chancery of the State of Delaware in and for New Castle County dated the 13th day of January, A.D. 1956; and all of the Order of said Court dated the 25th day of January, 1956. Writs issued to Sheriff of Kent County.
- B. 1956, February 27: Record received and filed. Counsel notified.
- C. 1956, March 6: Received and filed Sheriff's return.
- D. 1956, March 26: Received and filed stipulation, and order thereon, extending time for filing appellant's brief.
- E. 1956, April 12: Received and filed appellant's brief and appendix.
- F. 1956, April 13: Received and filed motion of Robert B. Walls, Jr., Guardian Ad Litem, for leave to file joint briefs with appellants, and order thereon.
- G. 1956, April 17: Received and filed stipulation, and order thereon, extending time for filing of briefs.
- H. 1956, April 24: Received and filed brief on behalf of Delaware Trust Company, Trustee, appellee.
- I. 1956, May 1: Received and filed brief of Wilmington Trust Company, Trustee.
- [fol. C] J. 1956, June 26: Received and filed brief on behalf of Edwin D. Steel, Jr., Guardian ad litem for Joseph Donner Winsor, et al.

- K. 1956, July 18: Received and filed reply brief of appellants.
- L. 1956, August 20: Received and filed order of Court assigning Associate Judge Caleb R. Layton, III, to fill up the number of the Court, the Chief Justice having disqualified himself. Notice sent to counsel.
- M. 1956, September 5: Received and filed order rescinding the assignment of Judge Caleb R. Layton, 3rd, and naming Judge James B. Carey to fill up the number of the Court. Copy of order to Judges and counsel.
- 1956, September 10: Hearing held.
- N. 1956, November 9: Received and filed motion to remand cause to Court below.
- O. 1956, November 15: Received and filed stipulation pertaining to remand, and order thereon dated November 13, 1956. Counsel notified.
- P. 1956, December 26: Received and filed stipulation pertaining to Florida order denying petition for rehearing and order granting stay.
- Q. 1957, January 16: Received and filed opinion dated January 14, 1957.
- R. 1957, January 25: Received and filed petition for reargument, or in the alternative, a petition for stay of mandate.
- S. 1957, February 8: Received and filed order denying petition for reargument, and staying the mandate for a period of 90 days. Counsel notified.

d

[fol. D] Clerk's Certificate to foregoing paper omitted in printing.

[fol. E] IN THE SUPREME COURT OF THE STATE OF DELAWARE

[Title omitted]

Appeal from the Court of Chancery of the State of Delaware in and for New Castle County, Civil Action No. 531

[fol. F] PRAECIPE—February 14, 1956

To:

T. EDGAR TOWNSEND

Clerk of the Supreme Court of the State of Delaware
Dover, Delaware:

Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla, Defendants Below, Appellants, hereby appeal from all of the Judgment of the Court of Chancery of the State of Delaware in and for New Castle County dated the 13th day of January, A.D. 1956, and also appeal from all of the Order of said Court dated the 25th [fol. G] day of January, A.D. 1956, denying the motion of these appellants for a new trial, both of which were entered in Civil Action Number 531 and hereby direct you to issue writs, to be served either personally or by registered mail, viz., (1) a writ (to be called the citation) directing the appellees to defend the cause, and (2) a writ (to be called the writ of error), directed to the clerk of the court below, requiring the return to the Supreme Court of the State of Delaware of the record of the cause below. There are set forth below the names and addresses of the attorneys of record for the appellees who have appeared by attorneys and the last known post office address of such appellees who have no attorney of record.

William H. Foulk, Esquire,
William Duffy, Jr., Esquire,
Attorneys for Plaintiff,
Elizabeth Donner Hanson,
228 Delaware Trust Building
Wilmington, Delaware;

Caleb S. Layton, Esquire,
Attorney for Defendant,
Wilmington Trust Company, Trustee,
4072 duPont Building
Wilmington, Delaware;

David F. Anderson, Esquire,
Attorney for Defendant,
Delaware Trust Company, Trustee,
948 Delaware Trust Building
Wilmington, Delaware;

Robert B. Walls, Esquire,
Guardian ad litem for Dorothy
B. R. Stewart and William Donner
Denckla,
500 Industrial Trust Building,
Wilmington, Delaware;

[fol. H] Edwin D. Steel, Jr., Esquire,
Guardian ad litem for Joseph
Donner Winsor, Curtin Winsor,
Jr., and Donner Hanson;
3108 duPont Building
Wilmington, Delaware;

Katherine N. R. Denckla
Hobe Sound
Florida

Elwyn L. Middleton, Esquire,
Guardian of the property of
Dorothy B. R. Stewart, a
mentally ill person,
Harvey Building
Post Office Box 1391
West Palm Beach, Florida;

Bryn Mawr Hospital
Bryn Mawr, Pennsylvania;

Miriam V. Moyer
1710 Fidelity-Philadelphia Bldg.
Philadelphia, Pennsylvania;

James Smith
221 Williams Street
Rosemont, Pennsylvania;

Walter Hamilton
Rosemont
Pennsylvania;

Dorothy A. Doyle
5108 Penn Street
Philadelphia 24, Pennsylvania;

Ruth Brenner
4224 Osage Avenue
Philadelphia 4, Pennsylvania;

Mary Clackens
4930 Westminster Avenue
Philadelphia 31, Pennsylvania;

Louisville Trust Company,
Trustee for Benedict H. Hanson,
and Trustee under agreements
with William H. Donner,
Louisville
Kentucky;

[fol. 1] William Donner Roosevelt
2540 South Ocean Blvd.
Palm Beach, Florida;

John Stewart
Beechwood Road
Rosemont, Pennsylvania;

Benedict H. Hanson
510 Park Avenue
New York City, New York.

Dated: February 14, 1956.

/s/ Arthur G. Logan

/s/ Aubrey B. Lank

Attorneys for Dora Stewart Lewis,
Mary Washington Stewart Borie and
Paula Browning Denckla, Defendants
Below, Appellants,
400 Continental American Building
Wilmington, Delaware.

[fol. J]

IN THE SUPREME COURT OF THE
STATE OF DELAWARE
CITATIONS AND SHERIFF'S RETURNS

ALLEN J. COOK
SHERIFF OF KENT COUNTY
DOVER, DELAWARE

March 6, 1956

Mr. T. E. Townsend, Jr.
Clerk
Supreme Court
State House

Dear Sir,

Personal service made on persons available. Others made by return-register mail and returns received from all except Katherine N. R. Denckla, Hobe Sound, Florida; and one, Ruth Brenner, 4224 Osage Avenue, Philadelphia 4, Pennsylvania returned unclaimed.

Very truly yours,

s/ ALLEN J. COOK
Sheriff of Kent County

[fol. K]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Benedict H. Hanson to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you

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are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.
(Seal)

[fol. L] Served the within Citation by return registered mail upon Benedict H. Hanson on the 16th day of February A. D. 1956. Return received the 18th day of February.

Costs \$.97

Allen J. Cook, Sheriff of Kent County.

[fol. M] CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite John Stewart to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla

in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.
(Seal)

i
[fol. N] Served the within Citation by return, registered mail upon John Stewart on the 16th day of February A. D. 1956. Return received the 17th day of February A. D. 1956.

Costs \$.97

Allen J. Cook, Sheriff of Kent County.

[fol. O]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite William Donner Roosevelt to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla

in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit, and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. P] Served the within Citation by return, registered mail upon William Donner Roosevelt on the 16th day of February A. D. 1956. Return received the 19th day of February A. D. 1956.

Costs \$.97

Allen J. Cook, Sheriff of Kent County.

[fol. Q]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Louisville Trust Company, a Kentucky corporation, as Trustee for Benedict H. Hanson, and as Trustee under agreements with William H. Donner to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said

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in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. R] Served the within Citation by return registered mail upon Louisville Trust Company on the 16th day of February A. D. 1956. Return received the 18th day of February A. D. 1956.

Costs \$.97

Allen J. Cook, Sheriff of Kent County.

[fol. S]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Mary Glackens to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla

in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. T] Served the within Citation by return registered mail upon Mary Glackens on the 16th day of February A. D. 1956. Return received this 21st day of February A. D. 1956.

Costs \$.97

Allen J. Cook, Sheriff of Kent County.

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[fol. U]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Ruth Brenner to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla

in a certain action before the Chancery Court in and for New Castle County, wherein the said Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. V] Registered Letter sent to Ruth Brenner on the 16th day of February A. D. 1956. Return unclaimed this 1st day of March A. D. 1956.

Costs \$.97

Allen J. Cook, Sheriff of Kent County.

[fol. W]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Dorothy A. Doyle to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. X] Served the within Citation by return registered mail upon Dorothy A. Doyle on the 16th day of February A. D. 1956. Return received the 18th day of February A. D. 1956.

Costs \$.97

Allen J. Cook, Sheriff of Kent County.

[fol. Y]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Walter Hamilton to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla

in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. Z] Served the within Citation by return registered mail upon Walter Hamilton on the 16th day of February A. D. 1956. Return received the 1st day of March A. D. 1956.

Costs \$.97

Allen J. Cook, Sheriff of Kent County.

[fol. AA]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite James Smith to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denekla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denekla

in a certain action, before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. BB] Served the within Citation by return, registered mail upon James Smith on the 16th day of February A. D. 1956. Return received the 17th day of February A. D. 1956.

Costs \$.97

Allen J. Cook, Sheriff of Kent County.

[fol. CC]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Miriam V. Moyer to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. DD] Served the within Citation by return, registered mail upon Miriam V. Moyer on the 16th day of February A. D. 1956. Return received the 18th day of February A. D. 1956.

Costs \$.97

Allen J. Cook, Sheriff of Kent County.

[fol. EE]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Bryn Mawr Hospital, a Pennsylvania corporation, to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denekla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denekla

in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. FF] Served the within Citation by return registered mail upon Bryn Mawr Hospital on the 16th day of February A. D. 1956. Return received the 18th day of February A. D. 1956.

Costs \$.97

Allen J. Cook, Sheriff of Kent County.

[fol. GG]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Elwyn L. Middleton, Guardian of the property of Dorothy B. R. Stewart, a mentally ill person to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla

in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. HH] Served the within Citation by return, registered mail upon Elwyn L. Middleton, Guardian of the property of Dorothy B. R. Stewart, a mentally ill person, on the 16th day of Feb. A. D. 1956. Return recieved on the 20th day of February A. D. 1956.

Costs \$.97

Allen J. Cook, Sheriff of Kent County.

[fol. II]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Katherine N. R. Denckla to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla

in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal).

[fol. JJ] Registered letter sent to Katherine N. R. Denckla on the 16th day of February A. D. 1956. No return received.

Costs \$.97

Allen J. Cook, Sheriff of Kent County.

t
[fol. KK]

WRIT OF ERROR

State of Delaware,

To Robert A. Stevenson, Register in Chancery of New Castle County, Greetings;

Whereas Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla, the defendants in a certain action in the Court of Chancery in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, is the plaintiff, being Civil Action No. 531, 19....., has alleged that

there is error in the record and proceedings in said action:

Therefore, We, in order to correct the error or errors, if any there be, and to do justice between the parties, Do Hereby Command You, that you send to this Court within 10 days from the service of this writ upon you, the record in said action as defined in the Rules of this Court, certifying under your hand and the Seal of your Court the correctness of the said record.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover, the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. LL] Service accepted this 16th day of February, A. D. 1956.

Howard T. Atkinson, Deputy Register

Served the within Writ of Error upon Robert A. Stevenson, Register in Chancery by leaving a true copy of the within Writ in the hands of Howard T. Atkinson, Deputy Register this 16th day of February A. D. 1956.

Costs \$10.00

Allen J. Cook, Sheriff of Kent County.

[fol. MM]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Robert B. Walls, Esquire, Guardian ad litem for Dorothy B. R. Stewart and William Donner Denckla to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla

in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, Deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956:

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. NN]. Service accepted this 16th day of February A. D. 1956.

Robert B. Walls, Jr. per David B. Cox, Jr.

Served the within Citation upon Robert B. Walls, Guardian ad litem for Dorothy B. R. Stewart and William Donner Denckla by leaving a true copy of the within Citation in the hands of David B. Cox, Jr., this 16th day of February A. D. 1956.

Costs \$1.00

Allen J. Cook, Sheriff of Kent County.

[fol. 00]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Wilmington Trust Company, a Delaware corporation, as Trustee under three separate Agreements, (1) and (2) with William H. Donner dated March 18, 1932 and March 19, 1932, and (3) with Dora Browning Donner dated March 25, 1935, to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla

in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. PP] Service accepted this 16th day of February A. D. 1956.

C. S. Layton, Atty. for Wilmington Trust Co.

Served the within citation upon Wilmington Trust Company, as Trustee, by leaving a true copy of the within Citation in the hands of Caleb S. Layton, this 16th day of February A. D. 1956.

Costs \$1.00

Allen J. Cook, Sheriff of Kent County.

[fol. QQ]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Delaware Trust Company, a Delaware corporation, as Trustee, under three separate Agreements, (1) with William H. Donner dated August 6, 1946, and (2) and (3) with Elizabeth Donner Hanson, both dated November 26, 1948 to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla

in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. RR] Service accepted this 16th day of February A. D. 1956.

David F. Anderson, Attorney for Delaware Trust Company, Trustee.

Served the within Citation upon Wilmington Trust Company as Trustee by leaving a true copy of the within Citation in the hands of David F. Anderson, this 16th day of February A. D. 1956.

Costs \$1.00

Allen J. Cook, Sheriff of Kent County.

[fol. SS]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Edwin D. Steel, Jr., Esquire, Guardian ad litem for Joseph Donner Winsor, Curtin Winsor Jr., and Donner Hanson to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla

in a certain action before the Chancery Court in and for New Castle County, wherein Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased, was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal)

[fol. TT] Service accepted this 16th day of February A. D. 1956.

Edwin D. Steel, Jr.

Served the within Citation upon Edwin D. Steele, Jr., Guardian ad litem for Joseph Donner Winsor, Curtin Winsor, Jr., and Donner Hanson, by leaving in his hands a true copy of the within Citation this 16th day of February A. D. 1956.

Costs \$1.00

Allen J. Cook, Sheriff of Kent County.

[fol. UU]

CITATION

State of Delaware,

To The Sheriff of Kent County, Greeting:

We command you that, in accordance with the Rules of this Court, you cite Elizabeth Donner Hanson, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased to defend the appeal taken by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla from a certain judgment or decree entered against the said Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla

in a certain action before the Chancery Court in and for New Castle County, wherein the said Elizabeth Donner Hanson was plaintiff and the said Dora Stewart Lewis, et al. were defendants; and this you are not to omit; and you are to make return of this citation within twenty days of the date hereof.

Witness the Honorable Clarence A. Southerland, our Chief Justice, at Dover the 3rd day of January, A.D. 1956.

Dated February 15, 1956.

T. E. Townsend, Jr., Clerk of the Supreme Court.

(Seal).

[fol. VV] Service made this 16th day of February A. D. 1956.

Wm. H. Foulk, Wm. Duffy, Jr., Attorneys for Pltf.
below.

Served the within Citation upon Elizabeth Donner Hanson as Executrix and Trustee by leaving a true copy of the within Citation in the hands of William H. Faulk and William Duffy, Jr. attorneys for Plaintiff this 16th day of February A. D. 1956.

Costs \$1.00

Allen J. Cook, Sheriff of Kent County.

TURN TO NEXT CARD

Supreme Court of the State of Delaware

DORA STEWART LEWIS, MARY
WASHINGTON STEWART
BORIE and PAULA BROWNING
DENCKLA,

Defendants Below, Appellants.

ELIZABETH DONNER HANSON, as
Executrix and Trustee under the last
Will of Dora Browning Donner,
ceased,

Plaintiff Below, Appellee.

WILMINGTON TRUST COMPANY, a
Delaware corporation, as Trustee under
three separate Agreements, (1) and (2)
with William H. Donner dated March
18, 1932 and March 19, 1932, and (3)
with Dora Browning Donner dated
March 25, 1935, et al.,

Defendants Below, Appellees.

No. 8, 1956.

Appeal from the Court of
Chancery of the State of
Delaware in and for New
Castle County, Civil Action
No. 531.

APPELLANTS' APPENDIX.

ARTHUR G. LOGAN,

AUBREY B. LANK,

Continental American Bldg.,
Wilmington, Delaware,

*Attorney for Appellants, Dora
Stewart Lewis, Mary Washing-
ton Stewart Borie and Paula
Browning Denckla.*

ROBERT B. WALLS, JR.,

Industrial Trust Bldg.,
Wilmington, Delaware,

*Guardian ad litem for Dorothy
B. R. Stewart and William
Donner Denckla.*

Note:

**Appellants' Appendix is
bound in as a part of the
Transcript of Record.**

TABLE OF CONTENTS OF APPELLANT'S APPENDIX.

	Page
Relevant Docket Entries	A1
Complaint for Declaratory Judgment	A3
Exhibit A	A14
Exhibit B	A21
Exhibit C	A30
Exhibit D	A35
Exhibit E	A39
Exhibit F	A45
Answer of Wilmington Trust Company, Trustee	A47
Answer of Delaware Trust Company	A49
Answer of Edwin D. Steel, Jr., Guardian Ad Litem for Joseph Donner Winsor and Donner Hanson	A50
Answer of Robert B. Walls, Jr., Guardian Ad Litem for Dorothy B. R. Stewart, a Mentally Ill Person, and for William Donner Denckla and Curtis Winsor, Jr., Infants	A54
Motion for Summary Judgment	A58
Answer of Defendants Dora Stewart Lewis, Mary Washington Stewart Borie, and Paula Browning Denckla	A60
Complaint Filed in Florida	A70
Florida Summary Final Decree	A83
Excerpts from Affidavit of Manley P. Caldwell (Dated March 30, 1955)	A86
Excerpts from Affidavit of John N. Farrell (Dated April 18, 1955)	A87
Affidavit of Joseph W. Chin, Jr. (Filed November 18, 1954)	A89
Exhibit A	A96
Exhibit B	A96
Exhibit C	A97
Exhibit D	A98
Exhibit E	A100
Exhibit F	A103
Exhibit G	A104
Exhibit H	A104
Exhibit I	A105

TABLE OF CONTENTS OF APPELLANT'S APPENDIX (Continued).

	Page
Excerpts from Affidavit of C. Kenneth Baxter (Dated November 12, 1954)	A110
Excerpts from Deposition of the Witness George P. Bissell, Jr., Taken by Marvel Defendants (December 28, 1954)	A114
George P. Bissell, Jr.—	
Direct Examination	A114
Cross-Examination	A126
Redirect Examination	A129
Exhibit A to Bissell, Deposition	A132-1
Excerpts from Deposition of the Witness Bye, Taken by Marvel Defendants (December 28, 1954)	A135
Robert C. Bye—	
Direct Examination	A133
Excerpts from Deposition of the Witness Fairman, Taken by Marvel Defendants (December 28, 1954)	A139
Endsley P. Fairman—	
Direct Examination	A139
Cross-Examination	A146
Redirect Examination	A147
Excerpts from Deposition of the Witness Bradford, Taken by the Marvel Defendants (December 28, 1954)	A148
William Bradford, Jr.—	
Direct Examination	A148
Excerpts from Deposition of the Witness Bancroft, Taken by the Marvel Defendants (December 28, 1954)	A153
J. Sellers Bancroft—	
Direct Examination	A153
Cross-Examination	A155
Affidavit of C. Kenneth Baxter (Dated December 27, 1954)	A157
Affidavit of John Stewart (Dated December 14, 1954)	A163
Affidavit of John E. Hairsine (Dated January 6, 1955)	A167
Affidavit of C. Robert Burns (Dated December 17, 1954)	A170
Excerpts from Affidavit of Elwyn L. Middleton (Dated September 3, 1954)	A172
Opinion (Filed December 29, 1955 (119 A. 2d 901))	A173
Judgment	A191
Motion for a New Trial (Filed January 20, 1956)	A199
Order (Filed January 25, 1956)	A202

APPELLANT'S APPENDIX.

RELEVANT DOCKET ENTRIES.

- # 1 JULY 28, A.D. 1954—COMPLAINT FOR DECLARATORY JUDGMENT
- # 7 Aug. 13, A.D. 1954—Answer of Wilmington Trust Company, Trustee.
* * *
- # 9 Aug. 26, A.D. 1954—Answer of Delaware Trust Company, as Trustee above named as one of the Defendants.
* * *
- # 12 Sept. 2, A.D. 1954—Answer of Edwin D. Steel, Jr. Guardian Ad Litem for Joseph Donner Winsor and Donner Hanson.
* * *
- # 17 Nov. 18, A.D. 1954—Notice, Motion for Summary Judgment, Affidavits and other papers.
* * *
- # 24 Feb. 14, A.D. 1955—Answer of Robert B. Walls, Jr., Guardian Ad Litem for Dorothy B. R. Stewart, a mentally ill person, and for William Donner Denckla and Curtin Winsor, Jr., infants.
- # 40 July 19, A.D. 1955—Order appointing the Honorable Daniel L. Herrmann Acting Vice Chancellor.
- # 41 July 22, A.D. 1955—Answer of Defendants, Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla, Counterclaim and Crossclaims.
- # 42 July 22, A.D. 1955—Motion for Summary Judgment.

- # 43 Aug. 9, A.D. 1955—Answer of Wilmington Trust Company, Trustee, to the Cross-claim of Dora Stewart Lewis, Mary Washington Stewart Borie and Paul Browning Denckla.
- # 44 Aug. 9, A.D. 1955—Answer of Delaware Trust Company, Trustee, one of the Defendants to the Cross-Claims asserted in the Answer of Defendants Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla.
- * * *
- # 46 Aug. 16, A.D. 1955—Notice and Motion for Summary Judgment.
- # 60 Sept. 29, A.D. 1955—Notice, Stipulation and Order Approving Stipulation as to Representation of Curtin Winsor, Jr. /
- * * *
- # 68 Dec. 28, A.D. 1955—Opinion of Acting Vice Chancellor Herrmann Based on Briefs and Argument
- # 69 Jan. 13, A.D. 1956—Judgment.
- # 70 Jan. 20, A.D. 1956—Notice and Motion for New Trial.
- # 71 Jan. 25, A.D. 1956—Order Denying Motion for New Trial.
- # 72 Feb. 16, A.D. 1956—Application of Robert B. Walls, Jr., Guardian Ad Litem, for Leave to Participate in Appeal to Supreme Court and Order Signed by Acting Vice Chancellor, D. L. Herrmann.
- # 73 Feb. 16, A.D. 1956—Writ of Error from the Supreme Court.

COMPLAINT FOR DECLARATORY JUDGMENT.**(Filed July 28, 1954.)**

1. Elizabeth Donner Hanson, the plaintiff, is Executrix of and Trustee under the will, dated December 3, 1949, of her mother. Dora Browning Donner, who died November 20, 1952 (a copy of said will is attached hereto, marked Exhibit A and made a part hereof). She was appointed Executrix by the County Judges' Court in and for Palm Beach County Florida, on December 23, 1952, and duly qualified thereafter.

2. Wilmington Trust Company is a Delaware corporation engaged in banking, with principal offices at Tenth and Market Streets, Wilmington, Delaware. It is Trustee under three separate agreements: (1) and (2) with William H. Donner dated March 18, 1932 and March 19, 1932, and (3) with Dora Browning Donner dated March 25, 1935, designated Trust #2152 (a copy of said agreement is attached hereto, marked Exhibit B and made a part hereof).

3. Delaware Trust Company is a Delaware corporation engaged in banking, with principal offices at 900 Market Street, Wilmington, Delaware. It is Trustee under three separate agreements: (1) with William H. Donner dated August 6, 1940 for the benefit of Katherine N. R. Denckla, designated Trust #8555; and (2) and (3) with Elizabeth Donner Hanson each dated November 26, 1948, for the benefit of Joseph Donner Winsor and Donner Hanson, designated Trusts #9022 and #9023 respectively.

4. Katherine N. R. Denckla (sometimes known as Katherine N. R. Denckla Ordway), beneficiary under Trust designated #8555, resides at Hobe Sound, Florida.

5. Elwyn L. Middleton, residing at Harvey Building, West Palm Beach, Florida, was duly appointed guardian for Dorothy B. R. Stewart, a mentally ill person, by the County Judges' Court in and for Palm Beach County, Florida, on December 22, 1952. Dorothy B. R. Stewart is the beneficiary for life of a testamentary trust created by Paragraph Fifth (b) of the will of the said Dora Browning Donner; the plaintiff is designated as Trustee thereof to pay income to Dorothy B. R. Stewart as directed by Katherine N. R. Denckla.

6. Joseph Donner Winsor and Donner Hanson, beneficiaries under Trusts designated #9022 and #9023, respectively, as hereinbefore set forth in Paragraph 3, are minors, residing with their mother, Elizabeth Donner Hanson, at 2540 South Ocean Boulevard, Palm Beach, Florida.

7. The following defendants, all of whom are non-residents of the State of Delaware, were appointed under a power of appointment dated October 3, 1949 (a copy of which is attached hereto, marked Exhibit C and made a part hereof), exercised by Dora Browning Donner under trust dated March 25, 1935, designated Trust #2152, and, with the exception of Louisville Trust Company, Trustee for Benedict H. Hanson, which appointment was later revoked by appointment dated July 7, 1950 (a copy of which is attached hereto, marked Exhibit D and made a part hereof), have received the amounts appointed to them:

Complaint

A5

Bryn Mawr Hospital \$10,000.
Bryn Mawr, Pa.

Miriam V. Moyer 2,000.
1710 Fidelity-Philadelphia Bldg.
Philadelphia, Pa.

James Smith 1,000.
221 Williams St.
Rosemont, Pa.

Walter Hamilton 1,000.
Rosemont, Pa.

Dorothy A. Doyle
5108 Penn St.
Philadelphia 24, Pa.

Ruth Brenner
4224 Osage Avenue
Philadelphia 4, Pa.

Mary Glackens
4930 Westminster Ave.
Philadelphia 31, Pa.

Servants in employ-
ment for more than 1,000.

two years at time of

Dora Browning Donner's 1,000.
death.

Louisville Trust Company 10,000.
Louisville, Ky.
Trustee for Benedict H.
Hanson, 510 Park Ave.,
New York City, New York.

8. The following defendants, all of whom are non-residents of the State of Delaware, were appointed under two powers of appointment dated April 6, 1935

(a copy of which is attached hereto, marked Exhibit E and made a part hereof), and October 11, 1939 (a copy of which is attached hereto, marked Exhibit F and made a part hereof), exercised by Dora Browning Donner under trust dated March 25, 1935, designated Trust #2152; all of said appointments were revoked by the terms of the said power of appointment dated December 3, 1949 (Exhibit C hereto), but the parties are joined so as to ~~permit adjudication~~ of any right which they may have under said trust:

(a) Louisville Trust Company, Louisville, Kentucky, Trustee under certain agreements with William H. Donner, by a power of appointment dated April 6, 1935, for the following persons in the amount of \$10,000 each:

Dora Stewart Lewis (Dora Browning Stewart)

7000 Glendale Ave.

Chevy Chase, Maryland

Mary Washington Stewart Borie (Mary Washington Stewart)

6912 Madisonville Rd.

Maremont, Cincinnati, Ohio

Paula Browning Denckla

Grubbs Mill Road

Berwyn, Pa.

William Donner Denckla

5 East 67th Street

New York, N.Y.

William Donner Roosevelt

2540 South Ocean Blvd.

Palm Beach, Florida

(b) Wilmington Trust Company, Wilmington, Delaware, in further trust under Trust #2152

by a power of appointment dated April 6, 1935, for afterborn grandchildren, who are as follows, in the amount of \$10,000 each:

Curtin Winsor, Jr.
2540 South Ocean Blvd.
Palm Beach, Florida

Joseph Denner Winsor
2540 South Ocean Blvd.
Palm Beach, Florida

Donner Hanson
2540 South Ocean Blvd.
Palm Beach, Florida

(c) Wilmington Trust Company, Wilmington, Delaware, Trustee under certain agreements with William H. Donner dated March 18, 1932, and March 19, 1932, for the benefit of Katherine N. R. Denckla and Dorothy B. R. Stewart, respectively, by a power of appointment dated April 6, 1935, each to receive one-half of the residue of said trust.

(d) John Stewart, of Beechwood Road, Rosemont, Pa., beneficiary in the amount of \$10,000 by a power of appointment dated April 6, 1935, and increased to \$15,000 by a power of appointment dated October 11, 1939.

9. Dora Browning Donner, while residing at Villanova, Pennsylvania, entered into the said trust agreement dated March 25, 1935, designated Trust #2152, with Wilmington Trust Company (Exhibit B hereto) whereby she provided as follows:

"Trustee shall pay over the net income of the trust fund unto Trustor, for and during the term of her natural life. Upon the death of

Trustor trustee shall assign, transfer, convey and deliver this trust fund, principal and undistributed income thereof, if any, free from this trust, unto such person or persons and in such manner and amounts and upon such trusts, terms and conditions as Trustor shall have appointed by the last instrument in writing which she shall have executed and delivered to Trustee, or failing such instrument, by her last Will and Testament, or in default of any such appointment then unto the then living issue of Trustor, per stirpes and not per capita."

This trust was accepted by Wilmington Trust Company at its principal offices in Wilmington, Delaware, at which place the principal securities listed in Schedule A of the agreement were delivered to it. Said Trustee has continued to administer the trust in accordance with the terms thereof since the date of its creation and has retained possession of the corpus of said trust in Delaware except as hereinafter set forth in Paragraph 15.

10. After the creation of said trust, Dora Browning Donner exercised her reserved power of appointment under date of April 6, 1935, by appointing \$5,000 to Bryn Mawr Hospital, \$10,000 to John Stewart, \$10,000 to each of her grandchildren, who are the persons hereinbefore set forth in Paragraphs 8 (a) and (b), and the balance to Wilmington Trust Company, in trust, one-half for the benefit of Katherine N. R. Denckla (named in the will of the said Dora Browning Donner as Katherine N. R. Denckla Ordway) and the other half for the benefit of the defendant, Dorothy B. R. Stewart, as hereinbefore set forth in Paragraph 8 (c).

11. Dora Browning Donner amended said appointment of April 6, 1935, by a further appointment dated October 11, 1939, which increased the amount appointed to John Stewart from \$10,000 to \$15,000, as hereinbefore set forth in Paragraph 8 (d), and appointed \$1,000 to James Smith.

12. By the terms of a power of appointment dated December 3, 1949 (Exhibit C hereto), Dora Browning Donner revoked all appointments made by her previous to that date, especially the appointment dated April 6, 1935, as altered, amended and modified by the appointment dated October 11, 1939, and appointed \$2,000 to Miriam V. Moyer; \$1,000 each to James Smith, Walter Hamilton, Dorothy A. Doyle, Ruth Brenner, and Mary Glackens; \$10,000 to Louisville Trust Company in trust for Benedict H. Hanson for life with remainder to Delaware Trust Company, Trustee under Trust #9023 for the benefit of Donner Hanson; \$10,000 to Bryn Mawr Hospital; and \$200,000 each to Delaware Trust Company as Trustee of Trusts #9022 for the benefit of Joseph Donner Winsor and #9023 for Donner Hanson, respectively; and the residue to the Executrix of her will, to be dealt with in accordance with the terms and conditions thereof.

13. The will of Dora Browning Donner dated December 3, 1949 (Paragraph Fifth of Exhibit A hereto) directs that her residuary estate be divided into two equal parts to be held as follows:

(a) One part to Delaware Trust Company, Trustee under an agreement with William H. Donner dated August 6, 1940 for the benefit of Katherine N. R. Denckla, designated Trust #8555.

(b) One part to the plaintiff, Elizabeth Donner Hanson, in trust, for the payment of so much

of the income and/or principal therefrom for the support and maintenance, benefit and/or comfort of Dorothy B. R. Stewart (whose guardian, Elwyn L. Middleton, is a defendant herein), in such amounts and at such times and in such manner as Katherine N. R. Denckla Ordway, defendant herein, shall direct; upon the death of the said Dorothy B. R. Stewart the remainder is to be paid over to Delaware Trust Company, Trustee under an agreement with William H. Donner dated August 6, 1940 for the benefit of the said Katherine N. R. Denckla, designated Trust #8555.

14. By the terms of an appointment dated July 7, 1950 (Exhibit D hereto), Dora Browning Donner revoked and eliminated the appointment of December 3, 1949, of \$10,000 to Louisville Trust Company as Trustee for the benefit of Benedict H. Hanson.

15. Subsequent to the death of Dora Browning Donner, Wilmington Trust Company, Trustee of said Trust #2152, pursuant to the provisions thereof and in accordance with the terms of Paragraph (b) of the appointment dated December 3, 1949, "to make all the payments *** directed to be made in cash or in kind or partly in cash and partly in kind; to withhold in whole or in part any payments directed to be made until the expiration of six months but not later than twelve months after *** death," on January 7, 1953, paid to the individual appointees and to Bryn Mawr Hospital the amounts appointed to them, aggregating \$17,000, and on April 17, 1953, delivered to Delaware Trust Company, Trustee under Trusts #9022 and #9023, securities and cash in the aggregate amount of \$400,000. Wilmington Trust Company continues to hold the remaining assets in said trust for the account

of the plaintiff as Executrix and Trustee of the will of Dora Browning Donner.

16. On January 22, 1954, Katherine N. R. Denckla and Elwyn L. Middleton, as guardian of the property of Dorothy B. R. Stewart, without having theretofore served any notice or made any demand on the plaintiff or Wilmington Trust Company as Trustee, filed suit against the plaintiff and the other defendants herein in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, being No. 31,980 in Chancery, asking for a declaratory decree determining the validity of the powers of appointment made by the said Dora Browning Donner under the provisions of her Trust dated March 25, 1935.

17. No valid service of process has been made upon either Wilmington Trust Company or Delaware Trust Company as Trustees in said suit, and said Trustees have not appeared therein. No part of the assets held by Wilmington Trust Company, as Trustee of Trust #2152, and transferred to the appointees under the power of appointment dated December 5, 1949, including those now held by Delaware Trust Company, as Trustee of Trusts #9022 and #9023, are now or have ever been in the State of Florida or under the jurisdiction of the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

18. The plaintiff, being a resident of and having been served in the State of Florida, moved the court to dismiss the suit because indispensable parties were absent the jurisdiction and the court could not, therefore, render an effective and binding final decree. The Circuit Court reserved decision on this motion pend-

ing a trial on the merits, and the Supreme Court of Florida denied certiorari.

19. The complaint in the Florida suit charged that the present plaintiff as Executrix of the Estate of Dora Browning Donner "has failed to take any steps" to capture for the estate the property of the trust appointed as hereinbefore recited. In the argument on the motion to dismiss, the complainants in that suit represented to the court that the plaintiff herein is a "wealthy" person, and could be surcharged by the Florida court for her failure to recover the assets from the Wilmington Trust Company in the first instance, and presently from Delaware Trust Company, after which she could recover from said Trustees. The plaintiff desires to have the controversy hereinbefore set forth promptly and finally and conclusively determined as to all parties so that she may effectively perform all of her duties, account as Executrix and enter upon her duties as Trustee.

20. The plaintiff has no adequate remedy at law.

WHEREFORE, the plaintiff prays that:

(1) An appropriate summons be directed to the said defendants, and in the case of non-residents an appropriate Order for Substituted Service be entered requiring the appearance of the said defendants.

(2) This Court determine by declaratory judgment the persons entitled to participate in the assets held in trust by the Wilmington Trust Company under Trust #2152 and the powers of appointment exercised pursuant thereto, at the date of death of Dora Browning Donner, and enter decrees awarding said funds to the persons entitled thereto.

(3) This Court grant such other and further relief as may be appropriate and necessary to effectuate its said judgment.

William H. Foulk

William Duffy, Jr.

Attorneys for Plaintiff

228 Delaware Trust Building
Wilmington, Delaware

EXHIBIT A

I, DORA BROWNING DONNER, of Palm Beach, Florida, do make, publish and declare this as and for my Last Will and Testament, hereby revoking and making void any and all Wills by me at any time heretofore made.

FIRST: I order and direct that all my just debts and funeral expenses be paid as soon after my death as conveniently may be.

SECOND: It is my desire that I be buried in St. David's Cemetery, Radnor, Pennsylvania, next to the grave of my son William H. Donner, Jr.

THIRD: I direct my Executrix to see that an appropriate marker be placed on my grave.

FOURTH: I give and bequeath all of my personal and household effects, including clothing, jewelry, silverware, furniture and automobiles, unto my daughters ELIZABETH DONNER HANSON and DORA DONNER IDE, or the survivor of them, to be divided between them, if both are living, as they may agree.

FIFTH: All the rest, residue and remainder of my estate, real, personal and mixed, whatsoever and wheresoever the same may be at the time of my death, including any and all property, rights and interest over which I may have power of appointment which prior to my death has not been effectively exercised by me in favor of my Executrix, I direct my Executrix to deal with as follows, namely:—

(a) Thereout to pay all estate, inheritance, transfer or other succession taxes or death duties, State and Federal, which by reason of my death

shall become payable upon or with respect to the property appointed by me by exercise of the power of appointment provided in my favour in paragraph 1 of a certain trust agreement entered into between me and Wilmington Trust Company, a Delaware corporation, as trustee on the 25th day of March, 1935;

(b) To divide the balance into two equal parts;

And I give and bequeath one of said parts to Delaware Trust Company, a corporation of the State of Delaware, its successors and assigns, trustee of a certain trust, dated August 6, 1940, numbered 8555, for the benefit of my daughter KATHERINE N. R. DENCKLA ORDWAY, to be held, administered and/or distributed by it subject to all the trusts, uses, terms and conditions set forth in said trust;

I give and bequeath the remaining part unto my Executrix, IN TRUST, NEVERTHELESS, during the lifetime of my daughter DOROTHY B. RODGERS STEWART, to hold, manage, invest and re-invest the balance, to collect the income thereof and, after paying out of such income all charges and expenses properly payable therefrom, to apply the net income therefrom and/or a part of the principal thereof to the support and maintenance, benefit and/or comfort of my said daughter DOROTHY B. RODGERS STEWART, in such amounts, at such times and in such manner as my daughter KATHERINE N. R. DENCKLA ORDWAY and after her death, the person occupying the office of Treasurer of The Donner Corporation, shall direct, and to accumulate and add to the principal the balance of such net income not so applied; and upon the

death of my said daughter DOROTHY B. RODGERS STEWART, or upon my death if she do not survive me, to pay over the remaining principal and undistributed income, if any, unto said Delaware Trust Company, its successors and assigns, trustee of said trust dated August 6, 1940, numbered 8555, for the benefit of my said daughter KATHERINE N. R. DENCKLA ORDWAY, to be held, administered and/or distributed by it subject to all the trusts, uses, terms and conditions set forth in said trust numbered 8555.

SIXTH: I authorize and empower the Executrix of this my Will and the Trustee of the trust herein created, in her discretion:—

(a) To retain any and all stocks, bonds, notes, securities and/or other property constituting my estate immediately after my death, without liability for any decrease in value thereof.

(b) To sell at public or private sale, exchange for like or unlike property, convey, lease for terms longer or shorter than the trust, and otherwise dispose of any or all property, real or personal, held in the estate by her administered, for such price and upon such terms and credits as may be deemed proper.

(c) To hold uninvested any money available for investment in the trust fund or to invest such money in such stocks, bonds, notes, securities and/or other property as may be deemed appropriate for the trust fund, irrespective of the rules of investment applying to trustees under any present or future laws of any jurisdiction and without any duty to diversify investments.

(d) To participate in any plan or proceedings for protecting or enforcing any right, obligation or interest arising from any stock, bond, note or security held in the estate by her administered, or for reorganizing consolidating, merging, or adjusting the finances of any corporation issuing the same, to accept in lieu thereof any new or substituted stocks, bonds, notes, and/or securities, whether of the same or a different kind or class, or with different priorities, rights or privileges, to pay any assessment or any expense incident thereto, and to do any other act or thing that may be deemed necessary or advisable in connection therewith.

(e) To borrow money for such periods of time and upon such terms or conditions as may be deemed advisable for the purpose of paying any taxes chargeable to the estate by her administered, or for the purpose of taking up subscription rights accruing upon any stock or security held therein, or for the protection, preservation or improvement of the estate by her administered, and she may mortgage or pledge such part or the whole of such estate as may be required to secure such loan or loans.

(f) To vote directly or by proxy at any election or stockholders' meeting any shares of stock held hereunder.

(g) To pay any legacy and to make any division or distribution of the estate by her administered in cash or in kind, or partly in cash and partly in kind, and to value and apportion the property to be so divided or distributed, which valuation and apportionment shall be final and

conclusive upon all persons and corporations interested therein.

(h) To retain any and all property constituting the trust funds in bearer form, or in her own name, or in the name of her nominee or nominees, without disclosing any fiduciary capacity; and her liability as Executrix and/or Trustee shall be neither increased nor decreased thereby.

SEVENTH: The Executrix of this my Will and/or the Trustee of the trust herein created shall exercise the powers heretofore granted to her in subdivisions (b) to (f) of Paragraph SIXTH hereof, only upon the written direction of or with the written consent of the adviser hereinafter named; provided, however, if at any time there shall be no adviser or if the adviser shall fail to give any written direction or to communicate in writing to said Executrix and/or Trustee its consent or disapproval as to the exercise of any of the aforesaid powers, for which exercise the direction or consent of such adviser shall be necessary, within ten days after said Executrix and/or Trustee shall have sent to the adviser, by registered mail at its last known address, a written request for such consent, then the Executrix and/or Trustee is hereby authorized and empowered to take such action in the premises as she, in her discretion, shall deem to be for the best interest of the beneficiary or beneficiaries of the trust created hereunder.

EIGHTH: The Donner Corporation, a corporation of the Commonwealth of Pennsylvania, shall be the sole adviser of the trust herein created. My said adviser shall be paid annually by my Trustee a reasonable fee in an amount to be agreed upon by my adviser and Trustee in compensation of its services and expenses as such adviser.

NINTH: I direct that:—

(a) No person or corporation dealing with the Executrix of this Will and/or the Trustee of the trust herein created shall be obliged to see to the application of any money paid or property delivered to such Executrix or Trustee, or to inquire into the necessity or propriety of such Executrix or Trustee exercising any of the powers herein conferred upon her, or to determine the existence of any fact upon which such Executrix' or Trustee's power to perform any act hereunder may be conditioned.

(b) The principal of my estate or of the trust herein created shall be credited with any stock dividends or subscription rights or distribution of principal or discounts received on investments from time to time held as a part hereof, and such principal shall likewise be charged with any premiums on any such investments.

(c) My said Trustee shall not create or accumulate any sinking fund to offset any premiums at which she may make purchases of securities in the trust estate herein created.

LASTLY: I hereby nominate and appoint my daughter, ELIZABETH DONNER HANSON, to be the Executrix of this my Last Will and Testament, and direct that she be not required to give bond with surety before receiving letters testamentary on my estate.

IN WITNESS WHEREOF, I, the said DORA BROWNING DONNER, have hereunto set my hand and seal this third day of December, in the year of our Lord, one thousand nine hundred and forty-nine (1949).

Dora B. Donner

Signed, sealed, published and declared by the above named DORA BROWNING DONNER as and for her Last Will and Testament, in our presence, who, in her presence, at her request, and in the presence of each other, have hereunto set our hands as witnesses, the day and year last aforesaid.

Dorothy Doyle RN

Address:

4527 Frankford Ave. Phila Pa.

Address:

Lyde MacFarland

1028 E. Elm Street

Conshohocken, Pa.

EXHIBIT B

THIS AGREEMENT, made this 25th day of March, A.D. 1935, between DORA BROWNING DONNER, of Villa Nova, Pennsylvania, party of the first part, hereinafter called "Trutor", and WILMINGTON TRUST COMPANY, a corporation of the State of Delaware, party of the second part, hereinafter called "Trustee", WITNESSETH:

WHEREAS, Trutor desires to establish a trust of certain securities and property described in "Schedule A" annexed hereto and made a part hereof, which securities and property, together with the investments, reinvestments and proceeds thereof, and such other securities and property as may hereafter be received by Trustee hereunder, are hereinafter called the "trust fund":

NOW, THEREFORE, in consideration of the premises, the mutual covenants hereinafter set forth and the sum of One Dollar (\$1.00) by Trustee to Trutor in hand paid, the receipt whereof is hereby acknowledged, Trutor has assigned, transferred and delivered, and by these presents does assign, transfer and deliver the securities and property described in said "Schedule A" unto Trustee and its successors, IN TRUST, NEVERTHELESS, for the following uses, intents and purposes, that is to say:

Trustee shall hold, manage, invest and reinvest the trust fund, collect the income thereof and pay out of such income all taxes, charges and expenses payable thereout including compensation to Trustee as hereinafter provided.

Trustee shall pay over the net income of the trust fund unto Trutor, for and during the term of her

natural life. Upon the death of Trustor Trustee shall assign, transfer, convey and deliver this trust fund, principal and undistributed income thereof, if any, free from this trust, unto such person or persons and in such manner and amounts and upon such trusts, terms and conditions as Trustor shall have appointed by the last instrument in writing which she shall have executed and delivered to Trustee, or failing such instrument, by her Last Will and Testament, or in default of any such appointment then unto the then living issue of Trustor, per stirpes and not per capita.

In the event of the death of the said Trustor, without having exercised the power of appointment hereinbefore upon her conferred, and without leaving surviving her any issue of hers, then upon the death of the said Trustor, Trustee shall assign, transfer, convey and deliver the trust fund, principal and undistributed income thereof unto the next of kin of said Trustor.

2. Subject to the provisions and limitations herein expressly set forth, Trustee shall have, in general, the power to do and perform any and all acts and things in relation to the trust fund in the same manner and to the same extent as an individual might or could do with respect to its own property. No enumeration of specific powers herein made shall be construed as a limitation upon the foregoing general power, nor shall any of the powers herein conferred upon Trustee be exhausted by the use thereof, but each shall be continuing.

Trustee is specifically authorized and empowered in its sole discretion, except as hereinafter otherwise provided in paragraph "4" hereof:

(a) To retain any and all stocks, bonds, notes, securities and/or other property constitut-

ing the original trust fund or added thereto, without liability on the part of Trustee for any decrease in value thereof.

(b) To sell at public or private sale, exchange for like or unlike property, convey, lease for terms longer or shorter than the trust, and otherwise dispose of any or all property, real or personal, held in the trust fund, for such price and upon such terms and credits as Trustee may deem proper.

(c) To invest the proceeds of any such sale or sales, and any other money available for investment, in such stocks, bonds, notes, securities and/or other income-producing property as may be deemed appropriate for this trust fund, irrespective of the rules of investment applying to trustees under any present or future laws of the State of Delaware or elsewhere.

(d) To vote directly or by proxy at any election or stockholders' meeting any shares of stock held hereunder.

(e) To participate in any plan or proceeding for protecting or enforcing any right, obligation or interest arising from any stock, bond, note or security held in the trust fund, or for reorganizing, consolidating, merging or adjusting the finances of any corporation issuing the same, to accept in lieu thereof any new or substituted stocks, bonds, notes and/or securities, to pay any assessment or any expense incident thereto, and to do any other act or thing that Trustee may deem necessary or advisable in connection therewith.

(f) To determine whether expenses and other disbursements shall be charged against principal or income, or partly against principal and partly against income, and such determination shall be conclusive upon all persons and corporations interested therein.

(g) To take and to hold any security or other property constituting a part of the trust fund, in bearer form or in its own name or in the name of its nominee or nominees, without disclosing its fiduciary capacity, and Trustee's liability shall be neither increased nor decreased thereby.

3. Trustor and/or any other person may at any time and from time to time add to the trust fund by devising, bequeathing, assigning, transferring, conveying, delivering or making payable to Trustee cash, securities, provided such securities are fully paid and non-assessable, and/or other property and all such cash, securities and/or property shall be held by Trustee subject to the terms of this trust.

4. Trustee shall exercise the powers hereinbefore granted to it in subdivisions (b), (c) and (e) of Paragraph "2" hereof only upon the written direction of, or with the written consent of the adviser of the trust; provided, however, that if at any time during the continuance of this trust there shall be no adviser of the trust, or if the adviser of the trust shall fail to give any written direction or to communicate in writing to Trustee his or her consent or disapproval as to the exercise of any of the aforesaid powers for which exercise the direction or consent of such adviser shall be necessary, within ten days after Trustee shall have sent to the adviser of the trust, by registered mail, at

his or her last known address, a written request for such consent, then Trustee is hereby authorized and empowered to take such action in the premises as it, in its sole discretion shall deem to be for the best interest of the beneficiary of this trust.

5. The adviser of the trust shall be William H. Donner, husband of Trustor, or such other person or persons as Trustor may nominate in writing delivered to Trustee during her lifetime, and such other person or persons so nominated shall become the adviser or advisers of this trust at such time and upon the happening of such conditions as the said Trustor may specify in writing.

6. No person or corporation dealing with Trustee shall be obliged to see to the application of money paid or property delivered to Trustee, to inquire into the necessity or the propriety of Trustee exercising any of the powers herein conferred upon it, or to determine the existence of any fact upon which Trustee's power to perform any act hereunder may be conditioned.

7. Any stock dividends or subscription rights or distribution of principal which may be received by Trustee on investments from time to time held by it hereunder shall be added to and form a part of the principal of said trust fund and shall be subject to the trust herein created.

8. Trustee shall charge all premiums and credit all discounts on investments against or to principal, as the case may be, but not against or to income; and Trustee shall not be required to create any reserve out of income for depreciation, obsolescence, amortization or other waste of principal.

9. Trustee shall be liable only for acts or omissions done or permitted to be done by it hereunder in bad faith, but shall not be liable for acts or omissions done or permitted to be done in good faith.

10. Trustor reserves the right to amend, alter or revoke this agreement in whole or in part at any time or times by written instrument signed by the principal and delivered to Trustee; provided, however, that the duties, powers, liabilities and compensation of Trustee hereunder shall not be substantially changed without its written consent.

11. The Trustor shall have the right to change from time to time the Trustee hereunder, to any successful Trust Company (of any state) that has been in business not less than ten years and has capital and surplus of not less than three million dollars; and in the event this right to change the Trustee is exercised, the Trustee then in office shall be entitled to ninety days prior notice in writing, unless such notice is waived by it; whereupon the said retiring Trustee shall transfer, assign and deliver all the moneys, securities and properties then subject hereto to such Trustee as shall be then designated, which successor Trustee shall hold the said trust subject to all the conditions herein, to the same effect as though now named herein, and the retiring Trustee, having fully accounted, shall be relieved after such delivery, transfer and assignment from all and every liability on account of all matters pertaining to the execution of the trust.

12. It is hereby agreed that Trustee shall receive as compensation for its services percentum of the gross income received by it from said trust fund and upon distribution of a part or all of said trust fund Trustee shall receive a sum equivalent to one per-

centum of the principal so distributed. Trustee shall also be entitled to receive a reasonable compensation for any extraordinary services performed by it hereunder.

13. Trustee accepts this trust and agrees to perform same in accordance with its terms and conditions.

IN WITNESS WHEREOF, DORA BROWNING DONNER, Trustor, has hereunto set her Hand and Seal, and WILMINGTON TRUST COMPANY, Trustee, has caused this agreement to be signed in its name by one of its Vice-Presidents and its corporate seal to be hereunto affixed by one of its Assistant Secretaries, all done in duplicate on the day and year first above written.

WITNESS:

J. E. Hairsine DORA BROWNING DONNER (SEAL)

WILMINGTON TRUST COMPANY

By: Walter J. Laird
 Vice-President

ATTEST:

D. Lindsay
Assistant Secretary

SCHEDULE A

112 30/50 shares American Gas & Electric Company
25 shares American Steamship Company Capital
30 shares Consolidated Gas Company of New York
Common

10 shares The Horn & Hardart Company Capital

100 shares Lone Star Gas Corporation 6½% Preferred

5 shares Mission Corporation Common

100 shares Standard Oil Company of New Jersey
Capital

478 shares Sun Oil Company 6% Preferred

160 shares United States Steel Corporation Common
\$2,000 City of Camden, New Jersey Harbor Improvement 5½'s due August 1, 1956

\$7,000 Crucible Steel Company of America Debenture
5's due May 1, 1940

\$16,000 Donner Steel Co. Inc. First Refunding 7's "A"
due January 1, 1942

\$15,000 Goodall Realty Corporation First 6's

\$ 1,000 due October 1, 1940

2,000 due April 1, 1941

10,000 due October 1, 1941

2,000 due April 1, 1942

\$3,000 Lexington Water Power Company First 5's
due January 1, 1968

\$15,000 Lloyds Finance Corporation Guaranteed 6's.,
Series "A" due October 1, 1936

\$20,000 City of Montgomery, Alabama Public Improvement Refunding 5½'s

\$18,000 due July 1, 1958

2,000 due July 1, 1953

- \$15,000 New York Water Service Corporation First
5's "A" due November 1, 1951
- \$100,000 City of Seattle, Washington Municipal Light
and Power Bond 1927 Series LU-1
 - \$ 5,000 due October 1, 1938
 - 3,000 due October 1, 1940
 - 10,000 due October 1, 1943
 - 12,000 due October 1, 1944
 - 10,000 due October 1, 1945
 - 10,000 due October 1, 1949
 - 20,000 due October 1, 1953
 - 25,000 due October 1, 1958
 - 5,000 due October 1, 1959
- \$25,000 United States Rubber Company 6½'s Series
"O" due March 1, 1940
- \$15,000 West Virginia Water Service Company First
5's "A" due August 1, 1951

EXHIBIT C

WHEREAS I, the undersigned, DORA BROWNING DONNER, as Trustor, entered into a certain trust agreement with WILMINGTON TRUST COMPANY, a Delaware corporation, as Trustee, on the 25th day of March, 1935 (hereinafter called the "trust agreement"); and

WHEREAS Paragraph 1 of the trust agreement provided among other things as follows:

"Upon the death of Trustor Trustee shall assign, transfer, convey and deliver this trust fund, principal and undistributed income thereof, if any, free from this trust, unto such person or persons and in such manner and amounts and upon such trusts, terms and conditions as Trustor shall have appointed by the last instrument in writing which she shall have executed and delivered to Trustee,——";

and

WHEREAS by instrument in writing dated the 6th day of April, 1935, I exercised the power of appointment provided as aforesaid by the trust agreement but in said instrument I reserved the right to revoke, alter, amend or modify said exercise of said power of appointment in whole or in part; and

WHEREAS by instrument in writing dated the 11th day of October, 1939, I altered, amended and modified said exercise of said power of appointment; and

WHEREAS I now desire to revoke all exercises by me, previous to the date hereof, of said power of appointment:

THESE PRESENTS WITNESS THAT:

1. I do hereby revoke all exercises by me, previous to the date hereof, of the power of appointment provided as aforesaid by the trust agreement, including, but not so as to restrict the generality of the foregoing, the exercise effected by the said instrument in writing dated the 6th day of April, 1935, as altered, amended and modified by the said instrument in writing dated the 11th day of October, 1939.

2. Exercising the said power of appointment provided as aforesaid by the trust agreement, I do hereby direct Wilmington Trust Company, trustee under the trust agreement, upon my death to assign, transfer, convey and deliver the principal and undistributed income of the trust fund held by it under the trust agreement as follows, namely:—

(a) As soon as conveniently may be, to pay over

(i) The sum of Two thousand dollars to MIRIAM V. MOYER, of Philadelphia, Pennsylvania;

(ii) The sum of One thousand dollars to JAMES SMITH if he shall be in the employment of a member of my family at the time of my death;

(iii) The sum of One thousand dollars to WALTER HAMILTON;

(iv) The sum of One thousand dollars to each of my servants, other than the said Walter Hamilton, who shall have been in my employment for more than two years at the time of my death;

(v) The sum of Ten thousand dollars to Louisville Trust Company, a corporation of

the Commonwealth of Kentucky, its successors and assigns, IN TRUST, NEVERTHELESS, to hold, manage, invest and reinvest the same, to collect the income thereof and after paying out of such income all charges and expenses properly payable therefrom, including a reasonable compensation to my said Trustee, to pay the net income of this trust fund to my son-in-law Benedict H. Hanson during the remainder of his lifetime and upon the death of my said son-in-law, I direct my said Trustee to pay the principal and undistributed income, if any, of the trust unto the Delaware Trust Company, a Corporation of the State of Delaware, its successors and assigns, Trustees of a certain trust dated November 26th, 1948, numbered 9023, created by my daughter Elizabeth Donner Hanson, for the benefit of my grandson, Donner Hanson, to be held administered and/or distributed by it subject to all the trusts, uses, terms and conditions set forth in said trust.

(vi) To the BRYN MAWR HOSPITAL, of Bryn Mawr, Pennsylvania, the sum of Ten thousand dollars to be used by said hospital to endow a bed to be inscribed "In honor of Dorothy B. Rodgers Stewart, given by her mother Mrs. Dora Browning Donner";

(vii) The sum of Two hundred thousand dollars to Delaware Trust Company, a corporation of the State of Delaware, its successors and assigns, trustee of a certain trust dated November 26, 1948, numbered 9022, created by my daughter Elizabeth Donner

Hanson for the benefit of my grandson JOSEPH DONNER WINSOR, to be held, administered and/or distributed by it subject to all the trusts, uses, terms and conditions set forth in said trust numbered 9022; and the further sum of Two hundred thousand dollars to Delaware Trust Company, a corporation of the State of Delaware, its successors and assigns, trustee of a certain trust dated November 26, 1948, numbered 9023, created by my daughter Elizabeth Donner Hanson for the benefit of my grandson DONNER HANSON, to be held, administered and/or distributed by it subject to all the trusts, uses, terms and conditions set forth in said trust numbered 9023;

(b) As soon as conveniently may be, to pay the residue of the principal and undistributed income of the said trust fund held by it under the trust agreement to the Executrix of my Last Will and Testament to be dealt with by her in accordance with the terms and conditions of my said Last Will and Testament and any Codicil thereto.

I authorize and direct said Wilmington Trust Company to make all the payments hereinbefore directed to be made in cash or in kind or partly in cash and partly in kind; to withhold in whole or in part any payments directed to be made until the expiration of six months but not later than twelve months after my death; and to make the payments hereinbefore directed to be made in the order in which they are set forth until all of the property held by it shall have been completely distributed, none of said payments to be made unless and until all of the payments preceding it in the order in which in this instrument they are set forth shall have been made in full.

IN WITNESS WHEREOF I, the said Dora Browning Donner, have set hereto my hand and seal this 3rd day of December, A.D. 1949.

Witness:

Dorothy A. Doyle RN . . DORA B. DONNER

Delivery of the foregoing instrument in writing dated the 3rd day of December, A.D. 1949, executed by Dora Browning Donner, has been made to Wilmington Trust Company this 21st day of December A.D. 1949.

WILMINGTON TRUST COMPANY

By: Jos. W. Chinn, Jr.

Vice President & Trust Officer

Attested: J. Y. Jeanes, Jr.

Assistant Secretary

EXHIBIT D

WHEREAS I, the undersigned DORA BROWNING DONNER, as Trustor, entered into a certain trust agreement with WILMINGTON TRUST COMPANY, a Delaware corporation, as Trustee, on the 25th day of March, 1935 (hereinafter called the "trust agreement"); and

WHEREAS Paragraph 1 of the trust agreement provided among other things as follows:

"Upon the death of Trustor Trustee shall assign, transfer, convey and deliver this trust fund, principal and undistributed income thereof, if any, free from this trust, unto such person or persons and in such manner and amounts and upon such trusts, terms and conditions as Trustor shall have appointed by the last instrument in writing which she shall have executed and delivered to Trustee, —";

and

WHEREAS by instrument in writing dated the 3rd day of December 1949, I exercised the power of appointment provided as aforesaid by the trust agreement after revoking all exercises by me, previous to the date thereof, of said power of appointment; and

WHEREAS I now desire to partially revoke the said instrument in writing dated the 3rd day of Decem-

ber 1949 by which I exercised said power of appointment.

THESE PRESENTS WITNESS THAT:

1. I do hereby partially revoke said instrument in writing the 3rd day of December 1949 by the deletion therefrom of subsection (V) of section (a) of Article 2 which reads as follows:-

(V) The sum of Ten thousand dollars to Louisville Trust Company, a corporation of the Commonwealth of Kentucky, its successors and assigns, IN TRUST, NEVERTHELESS, to hold, manage, invest and reinvest the same, to collect the income thereof and after paying out of such income all charges and expenses properly payable therefrom, including a reasonable compensation to my said Trustee, to pay the net income of this trust fund to my son-in-law Benedict H. Hanson during the remainder of his lifetime and upon the death of my said son-in-law, I direct my said Trustee to pay the principal and undistributed income, if any, of the trust unto the Delaware Trust Company, a corporation of the State of Delaware, its successors and assigns, Trustee of a certain trust dated November 26th, 1948, numbered 9023, created by my daughter Elizabeth Donner Hanson, for the benefit of my grandson, Donner Hanson, to be held administered and/or distributed by it subject to all the trusts, uses, terms and conditions set forth in said trust.

2. In all other respects, I do hereby confirm the instrument in writing dated the 3rd day of December 1949 by which I exercised the said power of appointment provided as aforesaid by the trust agreement.

IN WITNESS WHEREOF I, the said Dora Browning Donner, have set hereto my hand and seal this 7th day of July, A.D. 1950.

Witness:

Grace E. Walker

DORA B. DONNER

Delivery of the foregoing instrument in writing dated the 7th day of July, A.D. 1950, executed by Dora Browning Donner, has been made to Wilmington Trust Company this 11th day of July A.D. 1950.

WILMINGTON TRUST COMPANY

By: Joseph Rhoads
Asst. Vice-Pres.

Attested: T. Wm. Hitchcock
Asst. Sec.

EXHIBIT E

WHEREAS, I, the undersigned, DORA BROWNING DONNER, of Villa Nova, Pennsylvania, as Trustor, entered into a certain trust agreement with WILMINGTON TRUST COMPANY, a Delaware corporation, as Trustee on the 25th day of March, 1935; and

WHEREAS, paragraph 1 of said trust agreement provided among other things as follows:

“Upon the death of Trustor Trustee shall assign transfer, convey and deliver this trust fund, principal and undistributed income thereof, if any, free from this trust, unto such person or persons and in such manner and amounts and upon such trusts, terms and conditions as Trustor shall have appointed by the last instrument in writing which she shall have executed and delivered to Trustee, —”

and

WHEREAS, I hereby desire to exercise the foregoing power of appointment which I reserved in said trust agreement:

NOW, THEREFORE, I, the undersigned, Dora Browning Donner, in consideration of the premises and the mutual covenants in said trust agreement dated March 25, 1935 set forth, do hereby exercise the power of appointment which I reserved in paragraph “1” of said trust agreement dated March 25, 1935, and in the exercise of same I do hereby direct Wilmington Trust Company, Trustee under said trust agreement dated March 25, 1935, upon my death, to hold, administer and/or distribute the principal and net income of the trust fund from and after my death as follows:

A:— To pay over unto the Executor or Executors of my estate such amount or amounts as such Executor or Executors may request in writing delivered to the Trustee of said trust dated March 25, 1935 prior to the expiration of six months after my death;

B:— As soon as conveniently may be, to pay over the sum of Five Thousand Dollars (\$5,000) unto the Bryn Mawr Hospital of Bryn Mawr, Pennsylvania, to be used by said hospital to endow a bed for the benefit of young boys, said bed to be inscribed "In memory of William H. Donner, Jr., given by his mother, Mrs. Dora Browning Donner";

C:— As soon as conveniently may be to pay over the sum of Ten Thousand Dollars (\$10,000.00) unto John Stewart, presently residing in Radnor, Pennsylvania, his heirs, executors, administrators or assigns;

D:— As soon as conveniently may be to pay over the sum of Ten Thousand Dollars (\$10,000.00) unto Louisville Trust Company of Louisville, Kentucky, Trustee under agreement with William H. Donner dated September 28, 1934, for the benefit of Dora Browning Stewart, if said trust shall not have terminated prior to the date when such payment may be made, but if said trust shall have terminated prior to the date when such payment may be made then unto Dora Browning Stewart, if living, but if said Dora Browning Stewart shall not then be living then unto her then living issue, per stirpes and not per capita, or in default of any such issue then unto such person or persons as shall then be determined to be the distributees of Dora Browning Stewart under the intestacy laws of the State of Delaware in effect at the time of her death.

E:— As soon as conveniently may be to pay over the sum of Ten Thousand Dollars (\$10,000.00) unto

Louisville Trust Company of Louisville, Kentucky, Trustee under agreement with William H. Donner dated September 28, 1934, for the benefit of Mary Washington Stewart, if said trust shall not have terminated prior to the date when such payment may be made, but if said trust shall have terminated prior to the date when such payment may be made, then unto Mary Washington Stewart, if living, but if said Mary Washington Stewart shall not then be living then unto her then living issue, per stirpes and not per capita, or in default of any such issue then unto such person or persons as shall then be determined to be the distributees of Mary Washington Stewart under intestacy laws of the State of Delaware in effect at the time of her death.

F:— As soon as conveniently may be to pay over the sum of Ten Thousand Dollars (\$10,000.00) unto Louisville Trust Company of Louisville, Kentucky, Trustee under agreement with William H. Donner dated September 28, 1934, for the benefit of Paula Browning Denckla, if said trust shall not have terminated prior to the date when such payment may be made, but if said trust shall have terminated prior to the date when such payment may be made then unto Paula Browning Denckla, if living, but if said Paula Browning Denckla shall not then be living, then unto her then living issue, per stirpes and not per capita, or in default of any such issue then unto such person or persons as shall then be determined to be the distributees of Paula Browning Denckla under the intestacy laws of the State of Delaware in effect at the time of her death.

G:— As soon as conveniently may be to pay over the sum of Ten Thousand Dollars (\$10,000.00) unto Louisville Trust Company of Louisville, Kentucky, Trustee under agreement with William H. Donner dated December 22, 1934, for the benefit of William

Donner Denckla, if said trust shall not have terminated prior to the date when such payment may be made, but if said trust shall have terminated prior to the date when such payment may be made then unto William Donner Denckla, if living, but if said William Donner Denckla shall not then be living, then unto his then living issue, per stirpes and not per capita, or in default of any such issue then unto such person or persons as shall then be determined to be the distributees of William Donner Denckla under the intestacy laws of the State of Delaware in effect at the time of his death.

H:— As soon as conveniently may be to pay over the sum of Ten Thousand Dollars (\$10,000.00) unto Louisville Trust Company of Louisville, Kentucky, Trustee under agreement with William H. Donner dated December 22, 1934, for the benefit of William Donner Roosevelt, if said trust shall not have terminated prior to the date when such payment may be made, but if said trust shall have terminated prior to the date when such payment may be made then unto William Donner Roosevelt, if living, but if said William Donner Roosevelt shall not then be living, then unto his then living issue, per stirpes and not per capita, or in default of any such issue then unto such person or persons as shall then be determined to be the distributees of William Donner Roosevelt under the intestacy laws of the State of Delaware in effect at the time of his death.

I:— As soon as conveniently may be, to set aside and hold in further trust hereunder the sum of Ten Thousand Dollars (\$10,000.00) for each grandchild of Trustor that may be born after the date of this instrument but prior to the death of Trustor, as a separate trust fund, each of such separate trust funds, if any, to be held administered and/or distributed as follows:

To apply the net income of the trust fund to the support, maintenance, benefit and/or education of such grandchild for whom such trust fund shall have been set aside in such manner and to such extent as Trustee, in its sole discretion, shall deem to be for the best interest of such grandchild until such grandchild shall have attained the age of twenty-one years, at which time, or if such grandchild shall have attained the age of twenty-one years at the time when such fund shall be for him or her set aside then upon the setting aside of such trust fund Trustee shall assign, transfer convey and deliver such trust fund, principal and undistributed income thereof, in any, free from this trust, unto such grandchild. Any application of such income as aforesaid may be made directly by Trustee, or by payment to the guardian of the person of such grandchild, or to the person with whom such grandchild shall reside, or directly to such grandchild, and any such application or payment shall be a full discharge to Trustee therefor.

In the event of the death of any grandchild of Trustor for whom a separate trust fund shall be set aside as hereinbefore provided prior to such grandchild receiving distribution thereof, then upon the death of such grandchild Trustee shall assign, transfer, convey and deliver such separate trust fund set aside for such grandchild of Trustor so dying unto such person or persons as shall then be determined to be the distributees of such grandchild of Trustor so dying under the intestacy laws of the State of Delaware in effect at the time of the death of such grandchild.

J:— As soon as conveniently may be to pay over the balance of the trust fund, if any, after making all of the foregoing payments, as follows:

One-half thereof unto Wilmington Trust Company, Trustee under agreement with William H. Don-

ner dated March 18, 1932 for the benefit of Katherine N. R. Denckla, if such trust shall not have terminated prior to the date when such payment may be made, but if such trust shall have terminated prior to the date when such payment may be made then unto Katherine N. R. Denckla, if living, but if said Katherine N. R. Denckla shall not then be living, then unto her then living issue, per stirpes and not per capita, or in default of any such issue then unto Dorothy Browning Stewart, if living, but if said Dorothy Browning Stewart shall not then be living, then unto her then living issue per stirpes and not per capita, or in default of any such issue, then unto such person or persons as shall then be determined to be the distributees of Dorothy Browning Stewart under the intestacy laws of the State of Delaware in effect at the time of her death;

The remaining one-half thereof unto Wilmington Trust Company, Trustee under agreement with William H. Donner dated March 20, 1932 for the benefit of Dorothy Browning Stewart, if such trust shall not have terminated prior to the date when such payment may be made, but if such trust shall have terminated prior to the date when such payment may be made, then unto Dorothy Browning Stewart, if living, but if said Dorothy Browning Stewart shall not then be living, then unto her then living issue, per stirpes and not per capita, or in default of any such issue then unto such person or persons as shall then be determined to be the distributees of Dorothy Browning Stewart under the intestacy laws of the State of Delaware in effect at the time of her death.

I authorize and direct said Trustee to make any of the payments hereinbefore directed to be made in cash or in kind or partly in cash and partly in kind; to withhold in whole or in part any payments directed to be made in paragraphs B to J inclusive until the ex-

piration of six months but not later than twelve months after my death; and to make the payments hereinbefore directed to be made in the order in which they are set forth until all of the property held by it shall have been completely distributed,—none of said payments to be made unless and until all of the payments preceding it in the order in which they are set forth shall have been made in full.

I hereby reserve the right to revoke, alter amend or modify in whole or in part the appointment herein made of the property held by Wilmington Trust Company as Trustee under that certain agreement which I entered into with it on March 25, 1935.

IN WITNESS WHEREOF, I, the said DORA BROWNING DONNER, have hereunto set my Hand and Seal this sixth day of April, A.D. 1935.

WITNESS:

J. E. Hairsine DORA BROWNING DONNER (SEAL)

WILMINGTON TRUST COMPANY hereby acknowledges receipt of the foregoing exercise of power of appointment by Dora Browning Donner this 17th day of May A.D. 1935.

WILMINGTON TRUST COMPANY

By: Tilghman Johnson, V. P.

Attest: A. W. Birch, Ass't. Sec'y.

EXHIBIT F

WHEREAS, I, the undersigned, DORA BROWNING-DONNER, as Trustor, entered into a certain trust agreement with WILMINGTON TRUST COMPANY, a Delaware Corporation, as Trustee, on the 25th day of March, 1935; and

WHEREAS, Paragraph 1 of said trust agreement provided among other things as follows:

“Upon the death of Trustor Trustee shall assign, transfer, convey and deliver this trust fund, principal and undistributed income thereof, if any free from this trust, unto such person or persons and in such manner and amounts and upon such trusts, terms and conditions as Trustor shall have appointed by the last instrument in writing which she shall have executed and delivered to Trustee, —”

and

WHEREAS, by instrument in writing dated the 6th day of April 1935, I exercised the foregoing power of appointment and in said instrument of writing I reserved the right to revoke, alter, amend or modify said exercise of said power of appointment in whole or in part; and

WHEREAS, I now desire to alter, amend and modify said exercise of said power of appointment dated the 6th day of April, 1935, and do hereby alter, amend and modify the same as follows:—

1:— By revoking and canceling Paragraph 3 appearing on page 2 thereof and reading as follows:—

“C:— As soon as conveniently may be to pay over the sum of Ten Thousand Dollars (\$10,000.00)

unto John Stewart, presently residing in Radnor, Pennsylvania, his heirs, executors, administrators or assigns;”

and substituting in lieu thereof the following:—

“C:— As soon as conveniently may be to pay over the sum of Fifteen Thousand Dollars (\$15,000.00) unto John Stewart, presently residing in Radnor, Pennsylvania, his heirs, executors, administrators or assigns, & the sum of One Thousand Dollars (\$1,000.00) unto James Smith, presently residing in Villanova, Pennsylvania,—his heirs, executors, administrators or assigns;”

I hereby ratify and confirm said exercise of said power of appointment dated the 6th day of April, 1935 in all other respects.

IN WITNESS WHEREOF, I, the said DORA BROWNING DONNER, have hereunto set my Hand and Seal this 11th day of October A.D. 1939.

WITNESS:

J. E. Hairsine DORA BROWNING DONNER (SEAL)

WILMINGTON TRUST COMPANY hereby acknowledges receipt of the foregoing alteration, amendment and modification of exercise of power of appointment dated April 6, 1935 by Dora Browning Donner this 11th day of October A.D. 1939.

WILMINGTON TRUST COMPANY

By: Walter J. Laird, V. P.

Attest: A. W. Birch, Ass't Secy.

**ANSWER OF WILMINGTON TRUST COMPANY,
TRUSTEE.**

(Filed August 13, 1954.)

The answer of Wilmington Trust Company, Trustee, respectfully shows:

(1) The averments of paragraphs 1, 2, 7, 9, 10, 11, 12, 14 and 17 of the complaint are admitted.

(2) This defendant has no knowledge concerning, and neither admits nor denies, the averments contained in paragraphs 3, 4, 5, 6, 13, 18 and 19 of the complaint.

(3) This defendant admits the averments of paragraph 8 of the complaint, except that it has no knowledge with respect to the reason for the joinder of the parties mentioned in said paragraph.

(4) Defendant admits the averments of paragraph 15 of the complaint, except that it denies that it holds the remaining assets of the trust for the account of the plaintiff which is therein averred, but further shows that this defendant has paid unto the said plaintiff on account of Federal and Florida estate taxes the sum of Four Hundred Fifty-five Thousand Seven Hundred Seventy-seven Dollars and Eighty-one Cents (\$455,777.81).

(5) Defendant admits the averments of paragraph 16 of the complaint in so far as the said

paragraph concerns this defendant, and has no knowledge or information concerning the other averments of said paragraph.

(sgd) C. S. LAYTON

Richards, Layton & Finger
Attorneys for Defendant,
Wilmington Trust Company,
Trustee
4072 duPont Building
Wilmington, Delaware

ANSWER DELAWARE TRUST COMPANY.

(Filed August 26, 1954.)

(1) This defendant admits the allegations of paragraphs 2, 3, 6 and such parts of paragraphs 12, 15, and 17 as pertain to this defendant.

(2) This defendant has no information to form a belief as to the remaining allegations of the complaint and consequently neither admits nor denies the same.

(3) For further answer to said complaint this defendant avers that the payments made to this defendant as alleged in paragraph 15 of the complaint were legally and properly made.

/s/ David F. Anderson
Attorney for Delaware Trust
Company, Trustee, one of the
Defendants
948 Delaware Trust Building
Wilmington, Delaware

**ANSWER OF EDWIN D. STEEL, JR., GUARDIAN
AD LITEM FOR JOSEPH DONNER WINSOR
AND DONNER HANSON.**

(Filed September 2, 1954.)

1. Defendants admit, upon information and belief, the allegations of paragraphs 1, 2, 3, 8, 9, 10, 11, 12, 13, 14, and 17 of the complaint.

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 4 and 18 of the complaint.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 5 of the complaint. Defendants, upon information and belief, admit that the allegations of the last sentence of paragraph 5 of the complaint are substantially accurate, but defendants beg leave to refer to the will of Dora Browning Donner for an accurate and complete statement of the terms of said will.

4. Defendants admit the allegations of paragraph 6 of the complaint.

5. Defendants admit, upon information and belief, the allegations of paragraph 7 of the complaint, except that defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that the individual defendants therein referred to are non-residents of the State of Delaware.

6. Defendants admit, upon information and belief, the allegations contained in the first sentence of paragraph 15 of the complaint. Defendants, upon information and belief, deny the allegations of the last sentence of paragraph 15 of the complaint.

7. Defendants admit, upon information and belief, that the allegations of paragraph 16 of the complaint are substantially accurate, except that defendant denies, upon information and belief, that the parties defendant in the Florida litigation referred to in paragraph 16 of the complaint are identical with the parties defendant in the instant action.

8. Defendants admit, upon information and belief, that the allegations of the first sentence of paragraph 19 of the complaint are substantially accurate, but defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 19 of the complaint.

9. Defendants alledge that the allegations of paragraph 20 of the complaint constitute legal conclusions which defendants are not required to answer.

WHEREFORE, the defendant, Edwin D. Steel, Jr., guardian ad litem for Joseph Donner Winsor and Donner Hanson, prays that the court adjudge and determine that:

(a) The execution and delivery by Dora Browning Donner (sometimes referred to as Dora B. Donner) to the Wilmington Trust Company of the document dated December 3, 1949, (Complaint Exhibit C), and the execution and delivery by Dora Browning Donner to the Wilmington Trust Company of the document dated July 7, 1950, (Complaint Exhibit D), constituted valid and effective exercises of the power of appointment reserved to Dora Browning Donner under the agreement dated March 25, 1935, between Dora Browning Donner and Wilmington Trust Company (Complaint Exhibit B), insofar as Wilmington Trust Company, Trustee under the aforesaid agreement dated March 25, 1935 was directed by paragraph 2 (a) (vii) of the instrument dated December 3, 1949 (confirmed

by paragraph 2 of the instrument dated July 7, 1950) to assign, transfer, convey and deliver out of the principal and undistributed income of the trust fund held by the Wilmington Trust Company under the agreement with Dora Browning Donner dated March 25, 1935:

(vii) The sum of Two hundred thousand dollars to Delaware Trust Company a corporation of the State of Delaware, its successors and assigns, trustee of a certain trust dated November 26, 1948, numbered 9022, created by my daughter Elizabeth Donner Hanson for the benefit of my grandson JOSEPH DONNER WINSOR, to be held, administered and/or distributed by it subject to all the trusts, uses, terms and conditions set forth in said trust numbered 9022; and the further sum of Two hundred thousand dollars to Delaware Trust Company, a corporation of the State of Delaware, its successors and assigns, trustee of a certain trust dated November 26, 1948, numbered 9023, created by my daughter Elizabeth Donner Hanson for the benefit of my grandson DONNER HANSON, to be held, administered and/or distributed by it subject to all the trusts, uses, terms and conditions set forth in said trust numbered 9023.

(b) The payments referred to in paragraph 15 of complaint made by Wilmington Trust Company, Trustee under the agreement dated March 25, 1935 between Dora Browning Donner and Wilmington Trust Company, to Delaware Trust Company, Trustee under Trusts No. 9022 and 9023, in accordance with paragraph 2(a) of the instrument dated December 3, 1949 (confirmed by paragraph 2 of the instrument dated July 7, 1950) were valid and proper payments.

(c) All parties to this litigation are forever barred and foreclosed from contesting the adjudications prayed for in paragraphs (a) and (b) hereof.

EDWIN D. STEEL, JR.

Guardian ad litem for

Joseph Donner Winsor and

Donner Hanson

3018 duPont Building

Wilmington, Delaware

**ANSWER OF ROBERT B. WALLS, JR. GUARDIAN
AD LITEM FOR DOROTHY B. R. STEWART,
A MENTALLY ILL PERSON, AND FOR WIL-
LIAM DONNER DENCKLA AND CURTIN WIN-
SOR, JR., INFANTS.**

(Filed 2 14 55.)

1. Admitted

2. Admitted

3. Admitted

4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment.

5. (a) As to the first sentence, defendants are without knowledge or information sufficient to form a belief as to the truth of the averment;

(b) As to the second sentence, admitted.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment.

8. Admitted that the dates of the purported exercises of alleged power of appointment and contents of purported exercises are correctly set forth; as to the validity of the purported exercises, these defendants make answer in paragraphs 21 and 22 hereof.

9. Admitted, except as to the allegation that the trustee has continued to administer the trust in ac-

cordance with the terms thereof since the date of its creation, as to which these defendants are without knowledge or information sufficient to form a belief as to the truth thereof.

10. Admitted that the date of the purported exercise of alleged power of appointment and contents of the purported exercise are correctly set forth; as to the validity of the purported exercise, these defendants make answer in paragraph 21 hereof.

11. Admitted that the date of the purported exercise of alleged power of appointment and contents of the purported exercise are correctly set forth; as to the validity of the purported exercise, these defendants make answer in paragraph 21 hereof.

12. Admitted that the date of the purported exercise of alleged power of appointment and contents of the purported exercise are correctly set forth; as to the validity of the purported exercise, these defendants make answer in paragraph 22 hereof.

13. Admitted

14. Admitted that the terms of the purported exercise of the alleged power of appointment are correctly set forth; as to the validity thereof these defendants make answer in paragraph 22 hereof.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment.

17. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment.

19. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment.

20. Admitted

NEW MATTER

21. As to the validity of the purported exercises of the alleged power of appointment, of April 6, 1935, and October 11, 1939, defendants allege:

(a) They are valid as deeds and not as instruments testamentary in character.

(b) In the alternative, if they are instruments testamentary in character, they are valid because they were executed in accordance with the law of Pennsylvania, the domicile of Dora Browning Donner, at the time of the exercises.

(c) In the alternative, if they are invalid as instruments testamentary in character and invalid as deeds, they are so invalid as deeds because the alleged trust of March 25, 1935 was a mere agency account in that the alleged trustor, Dora Browning Donner, reserved to herself for life, possession, income and principal, and retained all or substantially all powers of management and control.

22. As to the validity of the purported exercises of the alleged power of appointment of December 3, 1949 and July 7, 1950, defendants allege:

(a) They are valid as deeds and not as instruments testamentary in character,

(b) In the alternative if invalid as deeds, they are so invalid for the reasons set forth in paragraph 21 c hereof.

/s/ R. B. Walls, Jr.

Robert B. Walls, Jr.

Guardian ad litem for

Dorothy B. R. Stewart,

William Donner Denckla

and Curtin Winsor, Jr.

500 Industrial Trust Bldg.

Wilmington, Delaware

MOTION FOR SUMMARY JUDGMENT.

(Filed November 18, 1954.)

NOW COMES EDWIN D. STEEL, who by order dated September 1, 1954, has been appointed guardian ad litem for Joseph Winsor and Donner Hanson, minors, two of the defendants in the above action, and moves the Court to enter a summary judgment in conformity with paragraphs (a), (b) and (c) of the prayers of the answer filed herein by Edwin D. Steel, guardian ad litem for Joseph Donner Winsor and Donner Hanson, on the ground that there is no genuine issue as to any material fact and that a judgment as prayed for in said answer is warranted as a matter of law.

This motion is based upon:

- (a) Affidavit of Paul D. Lovett
- (b) Affidavit of George Ainslie Goad
- (c) Affidavit of Joseph W. Chinn, Jr.
- (d) Affidavit of C. Kenneth Baxter
- (e) Affidavit of Edwin D. Steel, Jr.

(f) Certified copy of the following papers which have been filed in the action of *Denckla et al. v. Wilmington Trust Company, et al.*—No. 31980—in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (in Chancery):

Motion of Elizabeth Donner Hanson to Dismiss Suit—Filed February 18th, 1954;

Order Postponing Ruling on Motion of Elizabeth Donner Hanson—Entered and Filed April 9th, 1954;

Answer of Elizabeth Donner Hanson Exclusive of Delaware Complaint and Exhibits attached thereto—Filed August 3rd, 1954.

(g) Certified copy of the following papers filed in the Supreme Court of Florida in the action entitled *Elizabeth Donner Hanson etc., et al., Petitioner v. Katherine M. R. Denckla, et al., Respondents*—June term A.D. 1954:

Order dated June 29, 1954 denying petition for certiorari

Order dated July 16, 1954 denying petition for rehearing.

Dated: November 18, 1954.

/s/ EDWIN D. STEEL, JR.

Guardian ad litem for Joseph

Donner Hanson and Donner Winsor

3018 duPont Building

Wilmington, Delaware

**ANSWER OF DEFENDANTS DORA STEWART
LEWIS, MARY WASHINGTON STEWART
BORIE, AND PAULA BROWNING DENCKLA.**

Counter Claim and Cross-Claim.

(Filed 7/22/55.)

1. Admitted.

2. Admit the first sentence of paragraph 2, but these defendants are without information as to the alleged trusts referred to therein established by William H. Donner on March 18, 1932, and March 19, 1932, and neither admit nor deny the averments made concerning the same. Deny that Wilmington Trust Company is trustee under an agreement with Dora Browning Donner dated March 25, 1935.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Deny the averments of this paragraph, and say that each defendant set forth in said paragraph has wrongfully received the sum set opposite his name.

8. Admit that the purported powers of appointment mentioned in this paragraph were exercised as therein set out, but say that the purported appointments were not valid acts and created no rights in said defendants.

9. Admit that Dora Browning Donner entered into an agreement with Wilmington Trust Company dated March 25, 1935, (Exhibit B to the complaint herein) and that the securities listed in Schedule A

of said agreement were delivered to Wilmington Trust Company, but deny said agreement established a valid trust.

10. Admit that the purported powers of appointment mentioned in this paragraph were exercised as set out therein, but say that the purported appoint-said defendants.

11. Admit that the purported powers of appointment mentioned in this paragraph were exercised as set out therein, but say that the purported appointments were not valid acts and created no rights in said defendants.

12. Admit that the purported powers of appointment mentioned in this paragraph were exercised as set out therein, but say that the purported appoint-said defendants.

13. Admitted.

14. Admit that the purported power of appointment was allegedly exercised as set out therein.

15. Admitted, except they aver that such payments were made prior to the expiration of six months from the date of the death of Dora Browning Donner and that the payments to Delaware Trust Company were made on March 30, 1953, and these defendants further aver that such payments were illegally and invalidly made and were made contrary to the Last Will and Testament of Dora Browning Donner.

16. Admitted.

17. Denied, except it is admitted that neither Wilmington Trust Company nor Delaware Trust Company appeared in said action and that the assets were never physically in Florida.

18. Admitted.

19. These defendants have no knowledge concerning the averments of this paragraph, and neither admit nor deny the same, but allege that the charges of the Florida suit are set out in the complaint attached as Exhibit A, to the motion to dismiss filed herein by these answering defendants.

20. These defendants aver that the allegation continued in Paragraph 20 is a legal conclusion which these defendants are not required to answer.

21. Further answering said complaint and for an affirmative defense, these defendants aver that said Florida action mentioned in paragraph 15 of said complaint concerned questions raised herein. On the 14th day of January 1955 the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida entered a summary final decree in said Chancery Case No. 31,980, which decree provided:

“Concerning the declaration of trust dated March 25, 1935, and particularly the power of appointment dated December 3, 1949, no present interest passed to any beneficiary other than the Trustor (Testatrix). It seems clear to me, from the authorities, that the power of appointment was testamentary in character and did not constitute a valid inter vivos trust appointment. As the appointment had only one subscribing witness, rather than two, as required in Florida, it did not constitute a valid testamentary disposition. Hence, the executrix should receive the assets and dispose of them agreeable to the will under which she was appointed.”

Such decree is res judicata of the issues and questions raised herein, or in the alternative constitutes a collateral estoppel against the parties to this cause

who seek to relitigate the issues determined in the Florida action.

22. Further answering said complaint and for an affirmative defense, these defendants aver that the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County, Florida, on August 25, 1954, entered an order enjoining Elizabeth Donner Hanson, a resident of Palm Beach County and an appearing defendant in said Chancery Case No. 31,980, from further prosecuting either individually or through counsel, this action, No. 531, in this Court of Chancery of the State of Delaware; in and for New Castle County, which said order remains in full force and effect.

WHEREFORE, these defendants pray that the relief sought in the complaint herein filed be denied and the costs assessed against the plaintiff.

Counter-Claim.

1. Dora Browning Donner died a citizen and resident of Palm Beach County, Florida, on November 20, 1952, leaving a Last Will and Testament dated December 3, 1949, a copy of which is attached to the complaint herein as Exhibit A. Said Will was duly admitted to probate in the County Judge's Court in and for Palm Beach County, Florida, on December 23, 1952. At the time of her death, and at all times subsequent to January, 1944, decedent, Dora Browning Donner, was and had been a resident of the domiciled in Palm Beach County, Florida, and up to the date of her death, decedent paid intangible taxes assessed in Palm Beach County, Florida, upon all of the intangibles forming a part of the assets deposited with Wilmington Trust Company, Wilmington, Delaware under an agreement described in the next paragraph hereof.

2. On March 25, 1935, said Dora Browning Donner executed an agreement with the Wilmington Trust Company, Wilmington, Delaware, a copy of which is Exhibit B attached to the complaint filed herein. By virtue of the terms thereof and the powers retained by the said Dora Browning Donner and the manner in which the terms thereof were carried out, said agreement constituted an agency agreement terminable at any time by the said Dora Browning Donner or by her death.

3. With respect to the said agreement dated March 25, 1935, at the time it was entered into and until the death of Dora Browning Donner, no present interest passed to any beneficiary other than the said Dora Browning Donner. Said agreement was revocable at all times by the said Dora Browning Donner, and at all times during its existence said Dora Browning Donner retained all powers over the management and investment of the fund held by Wilmington Trust Company under said agreement and had complete control over the securities constituting said fund. Wilmington Trust Company at no time exercised any independent judgment with respect to said fund.

4. On or about December 3, 1949, Dora Browning Donner purported to execute an alleged power of appointment allegedly pursuant to the terms of the agreement of March 25, 1935, which said alleged power of appointment is attached as Exhibit C to the complaint filed herein. Said alleged power of appointment was executed by Dora Browning Donner at a time when she was a citizen of and domiciled in Palm Beach County, Florida. Said alleged exercise of the power of appointment was testamentary in character and was not to take effect until after the death of the said Dora Browning Donner and was not executed in the manner

required by the law of Florida for testamentary dispositions, as appears in paragraph 21 of the answer of these defendants filed herein.

5. By reason of the facts set out in the foregoing paragraphs 1 to 4 inclusive, the purported exercise of power of appointment of December 3, 1949, was invalid and of no effect, and the agreement of March 25, 1935, between Dora Browning Donner and the Wilmington Trust Company terminated on the date of her death, November 20, 1952. Upon qualifying as the executrix under the Last Will and Testament of Dora Browning Donner in December, 1952, it thereupon became the duty of Elizabeth Donner Hanson, as such executrix, to carry out the terms and provisions of the Will of Dora Browning Donner and to administer its assets accordingly, including the assets of said estate on deposit with Wilmington Trust Company. Said Elizabeth Donner Hanson, as such executrix, has neglected and failed so to do and, on the contrary, has permitted the assets of the estate of Dora Browning Donner on deposit at the time of her death at the Wilmington Trust Company to be depleted and wasted by directing the Wilmington Trust Company to pay from the assets of said estate to the parties mentioned and in the amounts set forth as appears in paragraph 15 of the complaint filed herein, and not to those entitled thereto under the Last Will and Testament of Dora Browning Donner.

WHEREFORE, defendants, Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla, *pray* that, in the event the relief sought in defendants' Cross-Claim against defendant, Delaware Trust Company, is not granted,

THIS COURT DECREE AS FOLLOWS:

1. That a money judgment be entered against Elizabeth Donner Hanson, individually and as executrix of the Last Will and Testament of Dora Browning Donner, deceased, in the amount of \$417,000.00 with interest thereon from January 7, 1953, as to \$17,000.00 and with interest thereon from March 30, 1953, as to \$400,000.00 in favor of Delaware Trust Company, a corporation of the State of Delaware, Trustee of a certain trust dated August 6, 1940, No. 8555, for the benefit of Katherine H. R. Denckla Ordway to the extent of one-half of said money judgment and in favor of Elizabeth Donner Hanson, Trustee under the Last Will and Testament of Dora Browning Donner to the extent of the remaining half of said money judgment.

2. Such other and further relief as may be appropriate and necessary.

Cross-Claims Against Defendants, Delaware Trust Company and Wilmington Trust Company.

1. Dora Browning Donner died a citizen and resident of Palm Beach County, Florida, on November 20, 1952, leaving a Last Will and Testament dated December 3, 1949, a copy of which is attached to the complaint herein as Exhibit A. Said Will was duly admitted to probate in the County Judge's Court in and for Palm Beach County, Florida, on December 23, 1952. At the time of her death, and at all times subsequent to January, 1944, decedent, Dora Browning Donner was and had been a resident of and domiciled in Palm Beach County, Florida, and up to the date of her death, decedent paid intangible taxes assessed in Palm Beach County, Florida, upon all of the intangibles forming a part of the assets deposited with Wil-

mington Trust Company, Wilmington, Delaware, under an agreement described in the next paragraph hereof.

2. On March 25, 1935, said Dora Browning Donner executed an agreement with the Wilmington Trust Company, Wilmington, Delaware, a copy of which is Exhibit B attached to the complaint filed herein. The cash and securities referred to in said agreement were deposited with the said Wilmington Trust Company, as will more fully appear by reference to both the complaint and answer filed herein. By virtue of the terms thereof and the powers retained by the said Dora Browning Donner and the manner in which the terms thereof were carried out, said agreement constituted an agency agreement terminable at any time by the said Dora Browning Donner or by her death.

3. With respect to the said agreement dated March 25, 1935, at the time it was entered into and until the death of Dora Browning Donner, no present interest passed to any beneficiary other than the said Dora Browning Donner. Said agreement was revocable at all times by the said Dora Browning Donner, and at all times during its existence, said Dora Browning Donner retained all powers over the management, investment, and reinvestment of the fund held by Wilmington Trust Company under said agreement and had complete control over the securities constituting said fund. Wilmington Trust Company at no time exercised any independent judgment with respect to said fund.

4. On or about December 3, 1949, Dora Browning Donner purported to execute an alleged power of appointment allegedly pursuant to the terms of the agreement of March 25, 1935, which said alleged power of appointment is attached as Exhibit C to the complaint filed herein. Said alleged power of appointment

was executed by Dora Browning Donner at a time when she was a citizen of and domiciled in Palm Beach County, Florida. Said alleged exercise of the power of appointment was testamentary in character and was not to take effect until after the death of the said Dora Browning Donner and was not executed in the manner required by the law of Florida for testamentary dispositions, as appears in paragraph 21 of the answer of these defendants filed herein.²

5. By reason of the facts set out in the foregoing paragraphs 1 to 4 inclusive, the purported exercise of the power of appointment of December 3, 1949, was and is invalid and of no force or effect, and the agreement of March 25, 1935, between Dora Browning Donner and the Wilmington Trust Company terminated on the date of her death, November 20, 1952.

6. Said Wilmington Trust Company, contrary to the provisions of the Last Will and Testament of Dora Browning Donner, paid out the sums of money mentioned to the persons set out in paragraph 15 of the complaint filed herein and as admitted in paragraph 4 of the answer of the Wilmington Trust Company filed herein.

7. On March 30, 1952, Delaware Trust Company received from the Wilmington Trust Company the securities and cash having a value in the amount of \$400,000.00 which they now hold as Trustee under Trust No. 9022 dated November 26, 1948, created by Elizabeth Donner Hanson and Trust No. 9023 dated November 26, 1948, created by Elizabeth Donner Hanson, said \$400,000.00 in securities and cash being divided at the time of receipt equally between said two trusts.

WHEREFORE, defendants, Dora Stewart Lewis, Mary Washington Stewart Borie, and Paula Browning Denckla, pray as follows:

1. That Delaware Trust Company be ordered to account for the securities and cash received from Wilmington Trust Company and placed in Trusts Nos. 9022 and 9023, together with all profits, income and increment arising therefrom, and be directed to transfer the same under the provisions of the Last Will and Testament of Dora Browning Donner.

2. That, in the event the relief sought above against defendant, Delaware Trust Company, is not granted, that a money judgment be entered against Wilmington Trust Company, Wilmington, Delaware, in the amount of \$417,000.00 with interest thereon from January 7, 1953, as to \$17,000.00 and with interest thereon from March 30, 1953, as to \$400,000.00, in favor of Delaware Trust Company, a corporation of the State of Delaware, Trustee of a certain trust dated August 6, 1940, No. 8555, for the benefit of Katherine N. R. Denckla Ordway to the extent of one-half of said money judgment, and in favor of Elizabeth Donner Hanson, Trustee under the Last Will and Testament of Dora Browning Donner to the extent of the remaining half of said money judgment.

3. Such other and further relief as may be appropriate and necessary.

/s/ JOSIAH MARVEL, A.B.L.

/s/ ARTHUR G. LOGAN

/s/ AUBREY B. LANK

Attorneys for Defendants as above
400 Continental American Building
Wilmington, Delaware

COMPLAINT FILED IN FLORIDA.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA
IN CHANCERY

KATHERINE N. R. DENCKLA, individually, and ELWYN L. MIDDLETON, as guardian of the property of DOROTHY BROWNING STEWART, also known as as Dorothy B. Stewart and Dorothy B. Rodgers Stewart, an incompetent person,

Plaintiffs

v.

WILMINGTON TRUST COMPANY, a Delaware corporation; LOUISVILLE TRUST COMPANY, a Kentucky corporation; DELAWARE TRUST COMPANY, a Delaware corporation; BRYN MAWR HOSPITAL, a Pennsylvania corporation; THE DONNER CORPORATION, a Pennsylvania corporation; BENEDICT H. HANSON: JOHN STEWART: DORA BROWNING STEWART LEWIS: MARY WASHINGTON STEWART BORIE: MIRIAM V. MOYER: JAMES SMITH: DORA DONNER IDE: PAULA BROWNING DENCKLA: WILLIAM DONNER DENCKLA: WILLIAM DONNER ROOSEVELT: DONNER HANSON: JOSEPH DONNER WINSOR: WALTER HAMILTON: ELIZABETH DONNER HANSON, individually and as executrix of the will of DORA BROWNING DONNER, deceased,

No. 31,980

Defendants

**BILL FOR DECLARATORY DECREE
TO THE ABOVE STYLED COURT, AND TO THE
HONORABLE JUDGES THEREOF:**

The above named plaintiffs bring this bill for declaratory decree against the above named defendants, and respectfully allege:

1.

The defendant, Wilmington Trust Company, is a Delaware corporation with its principal office and place of business in Wilmington, Delaware.

The defendant, Louisville Trust Company, is a Kentucky corporation with its principal office and place of business in Louisville, Kentucky.

The defendant, Delaware Trust Company, is a Delaware corporation with its principal office and place of business in Wilmington, Delaware.

The defendant, Bryn-Mawr Hospital, is a Pennsylvania corporation with its principal office and place of business in Bryn-Mawr, Pennsylvania.

The defendant, The Donner Corporation, is a Pennsylvania corporation with its principal office and place of business at 1710 Fidelity Trust Building, Philadelphia, Pennsylvania.

Diligent search and inquiry have been made to discover the true names, domiciles, principal places of business, and status of said foreign corporation, and the same are set forth above in this bill for declaratory decree as particularly as are known to the plaintiffs and to the affiant making the affidavit by which this bill for declaratory decree is verified. Diligent search and inquiry have also been made to discover the names and whereabouts of all persons upon whom service of process would bind said corporations, and the same are specified as particularly as are known to the plain-

tiffs and said affiant. Said corporations are not qualified to do business in the state of Florida and none of the officers, directors, general managers, cashiers, resident agents and business agents of said corporations can be found within the state of Florida, and for this reason constructive service of process is sought upon said corporations, as provided by the statutes of the state of Florida.

The above-named corporate defendants are named as defendants in their individual corporate capacities and as trustees representing various trusts as disclosed by this bill for declaratory decree, in order that they may be bound by any decree entered by this court, not only in their capacities as trustees, but also in their individual corporate capacities.

The defendant, Benedict H. Hanson, is a resident of the state of New York, now residing at 510 Park Avenue, New York, N.Y., Apartment B 4.

The defendant, John Stewart, is a resident of the state of Pennsylvania, now residing on Beachwood Road, Rosemont, Pennsylvania.

The defendant, Dora Browning Stewart Lewis, is a resident of the state of Maryland, now residing at 7000 Glendale, Chevy Chase, Maryland.

The defendant, Mary Washington Stewart Borie, is a resident of the state of Ohio, now residing at 6912 Madisonville Road, Marimont, Cincinnati, Ohio.

The defendant, Miriam V. Moyer, is a resident of the state of Pennsylvania, now residing at 1719 Fidelity Trust Building, Philadelphia, Pennsylvania.

The defendant, James Smith, is a resident of the state of Pennsylvania, now residing at 221 Williams Road, Rosemont, Pennsylvania.

The defendant, Dora Donner Ide, is a resident of the state of New York, now residing at 485 Park Avenue, New York, N.Y.

The defendant, Paula Browning Denckla, is a minor, now twenty years of age. She resides at 5 East 6th Street, New York, N.Y.

The defendant, William Donner Denckla, is a minor, now nineteen years of age. He resides at 5 East 6th Street, New York, N.Y.

Said two minors, Paula Browning Denckla and William Donner Denckla, are the children of the plaintiff, Katherine N. P. Denckla.

Diligent search and inquiry have been made to discover the names and residences of the above named non-resident defendants, and the same are set forth above in this bill for declaratory decree as particularly as are known to the plaintiffs and to the affiant making the affidavit by which this bill for declaratory decree is verified. Constructive service of process on said non-resident defendants is sought, as provided by the statutes of the state of Florida.

The defendant, William Donner Roosevelt, is a resident of Palm Beach, Florida, and is more than twenty-one years of age.

The defendants, Donner Hanson and Joseph Donner Winsor, are both minors, and they reside in Palm Beach County with their mother, Elizabeth Donner Hanson, on South Ocean Boulevard, Palm Beach, Florida.

The defendant, Walter Hamilton, is a resident of Palm Beach County, Florida, and is more than twenty-one years of age.

The defendant, Elizabeth Donner Hanson, is made a party defendant individually and as executrix of the Will of Dora Browning Donner, deceased. The said Elizabeth Donner Hanson is a single woman residing on South Ocean Boulevard, Palm Beach, Florida, and is a resident of Palm Beach County, Florida.

2.

Dora Browning Donner died a citizen and resident of Palm Beach County, Florida, on November 20, 1952, leaving a Last Will and Testament dated December 3, 1949, a copy of which is hereto attached and made a part hereof and marked Exhibit "1". Said will was duly admitted to probate in the County Judge's Court in and for Palm Beach County, Florida, on December 23, 1952. At the date of her death and at all times subsequent to January 15, 1944, decedent had been a resident of and domiciled in Palm Beach County, Florida. Prior to taking up her domicile in Florida, she had been a resident and citizen of the State of Pennsylvania, and had been a resident of that state since prior to 1935. At all times subsequent to January 15, 1944 and up to the date of her death, decedent paid intangible taxes assessed in Palm Beach County, Florida, upon all of the intangibles forming a part of the assets of the trust described in the next paragraph of this bill for declaratory decree.

3.

On March 25, 1935, said Dora Browning Donner, then residing in Villa Nova, Pennsylvania, executed a trust agreement in which the defendant, Wilmington Trust Company, a Delaware corporation, was named as trustee. A copy of said trust agreement is hereto attached and made a part hereof and marked exhibit 2. Said trust agreement, under its terms existed only for the life of the said Dora Browning Donner, and it provided that at her death the trust property described in said trust agreement would be disposed of as provided under the terms of her last will and testament, unless prior to her death she had executed a valid power of appointment making a different disposition

of part or all of the trust property described in schedule "A" attached to said trust agreement.

Said trust agreement contained the following provision:

"1. Trustee shall hold, manage, invest, and re-invest the trust fund, collect the income thereof and pay out of such income all taxes, charges and expenses payable thereout including compensation to Trustee as hereinafter provided.

Trustee shall pay over the net income of the trust fund unto Trustor, for and during the term of her natural life. Upon the death of Trustor Trustee shall assign, transfer, convey and deliver this trust fund, principal and undistributed income thereof, if any, free from this trust, unto such person or persons and in such manner and amounts and upon such trusts, terms and conditions as Trustor shall have appointed by the last instrument in writing which sh shall have executed and delivered to Trustee, or failing such instrument, by her last Will and Testament, or in default of any such appointment then unto the then living issue of Trustor, per stirpes and not per capita."

4.

Said Dora Browning Donner attempted to exercise the power of appointment reserved, as shown in the above quotation, and executed an alleged power of appointment, dated April 6, 1935, a copy of which is hereto attached and made a part hereof and marked exhibit 3. By the terms of said alleged power of appointment the said Dora Browning Donner attempted

to provide for certain payments to be made to her executors and also

\$ 5,000.00 to be paid to the defendant, Bryn-Mawr Hospital;

\$10,000.00 to be paid to the defendant, John Stewart;

\$10,000.00 to be paid to Louisville Trust Company, as trustee, for the benefit of the defendant, Dora Browning Stewart, now Dora Browning Stewart Lewis;

\$10,000.00 to be paid to Louisville Trust Company as trustee, for the benefit of the defendant, Mary Washington Stewart, now Mary Washington Stewart Borie;

\$10,000.00 to be paid to the defendant, Louisville Trust Company, as trustee, for the benefit of the defendant, Paula Browning Denckla;

\$10,000.00 to be paid to the defendant, Louisville Trust Company, as trustee, for the benefit of the defendant, William Donner Denckla;

\$10,000.00 to be paid to the defendant, Louisville Trust Company, as trustee, for the benefit of the defendant, William Donner Roosevelt;

\$10,000.00 for each grandchild of said trustor, Dora Browning Donner, born after the date of said alleged power of appointment, April 6, 1935;

and the balance of said trust to be divided into two equal parts, to be paid one-half to the defendant, Wilmington Trust Company, as trustee, for the benefit of the plaintiff, Katherine N. R. Denckla, who was named in the will of the deceased as Katherine N. R. Denckla Ordway, but whose name is now Katherine N. R. Denckla, and the other one-half to the defendant, Wilmington Trust Company, as trustee, for the benefit

of the defendant, Dorothy Browning Stewart, all as shown by said alleged power of appointment above described as exhibit 3 and attached to this bill for declaratory decree and made a part hereof.

5.

By virtue of said power retained by the said Dora Browning Donner in the trust instrument dated March 25, 1935, which provided that the last instrument in writing executed by her as a power of appointment would control the disposition of said trust assets, she again attempted to exercise her power of appointment on October 11, 1939, and in said attempted power of appointment she revoked and cancelled paragraph C of the power of appointment dated April 6, 1935, providing \$10,000.00 for the defendant, John Stewart, and increased the amount for said John Stewart to \$15,000.00 and added \$1,000.00 for James Smith. A copy of said alleged power of appointment is hereto attached and made a part hereof and marked exhibit 4.

6.

Thereafter, the said Dora Browning Donner again attempted to exercise said alleged power of appointment contained in said trust instrument dated March 25, 1935, providing that the last instrument in writing executed by her would control said trust assets, and she executed an alleged power of appointment designated "*Donner * First Power of Appointment*," dated December 3, 1949. In this alleged power of appointment she revoked all previous exercises of said power of appointment, the same being those above mentioned, dated April 6, 1935, and later amended by the one dated October 11, 1939. She then provided in said alleged power of appointment, designated as "*Donner * First Power of Appointment*," for the disposition of said trust assets as follows:

- \$ 2,000.00 to the defendant, Miriam V. Moyer;
- \$ 1,000.00 to the defendant, James Smith;
- \$ 1,000.00 to the defendant, Walter Hamilton;
- \$ 1,000.00 to each of her servants who had been in her employ for more than two years at the time of her death;
- \$ 10,000.00 to the defendant, Louisville Trust Company, as trustee, for the benefit of the defendant, Benedict H. Hanson;
- \$ 10,000.00 to the defendant, Bryn Mawr Hospital, Bryn Mawr, Pennsylvania, to endow a bed in honor of Dorothy B. Rodgers Stewart;
- \$200,000.00 to the defendant, Delaware Trust Company, as trustee, for the benefit of Joseph Donner Winsor;
- \$200,000.00 to the defendant, Delaware Trust Company, as trustee, for the benefit of the defendant, Donner Hanson.

Said alleged power of appointment then provided that the residue of the principal and undistributed income of said trust should be paid to the executrix of the last will and testament of the said Dora Browning Donner. A copy of said alleged power of appointment, described as "Donner * First Power of Appointment," is hereto attached and made a part hereof and marked exhibit 5.

7.

Thereafter, the said Dora Browning Donner, by reason of the provision in said trust instrument, dated March 25, 1935, providing that the last instrument in writing which she should execute would control the disposition of said trust assets, again attempted to exercise said alleged power of appointment by executing a written instrument, dated July 7, 1950, and

designated "*Donner ' Second Power of Appointment.*" In this alleged power of appointment she revoked the \$10,000.00 to the defendant, Louisville Trust Company, as trustee, for the benefit of her son-in-law, Benedict H. Hanson, and she confirmed her alleged power of appointment dated December 3, 1949, in all other respects. A copy of said last alleged power of appointment is hereto attached and made a part hereof and marked exhibit 6.

8.

The defendant, Elizabeth Donner Hanson, is the executrix of the will of said deceased, a copy of which is attached to this bill for declaratory decree as exhibit 1, and she is made a party defendant for the purpose of binding her as such executrix, and also binding her individually as to any rights that she may have as a result of the will, the trust agreement, and the alleged powers of appointment here inabove mentioned.

Dora Donner Ide is made a party defendant by reason of the fact that she is named as a legatee in said will and in order to bind her by the terms and provisions of the decree to be entered in this case pertaining to the will, the trust instrument, and the powers of appointment hereinabove mentioned.

The Donner Corporation, a Pennsylvania Corporation, is made a party defendant by reason of the fact that item *Eight's* of said will names it as the sole adviser of the trustee for the trust created in said will, and in order that it may be bound by the terms of the decree to be entered in this case with reference to said will, trust agreement, and powers of appointment hereinbefore mentioned.

In item I of the first alleged power of appointment, dated April 6, 1935, and attached as exhibit 3 to this

bill for declaratory decree, the trustor provided \$10,000.00 for each grandchild of the trustor born after April 6, 1935. Plaintiff alleges that all grandchildren born to said trustor after that date have been made parties defendant in this case.

In item (iv) of the power of appointment known as "Donner • First Power of appointment," dated December 3, 1949, attached as exhibit 5 to this bill for declaratory decree, provision is made for \$1,000.00 to be paid to each servant who shall have been in the employment of the trustor, Dora Browning Donner, for a period of more than two years prior to her death. Plaintiffs allege that there are no such servants, and for that reason none are made parties defendant in this case.

9.

Plaintiffs allege that questions and doubts have arisen, concerning what property passes under the residuary clause of the Last Will and Testament of the decedent, Dora Browning Donner, particularly that part of the residuary clause which purports to cover property over which the decedent had powers of appointment and which she had failed to exercise effectively in her lifetime. If, as to the trust described in paragraph numbered 3 of this bill for declaratory decree, the decedent, during her lifetime, effectively and validly exercised powers of appointment thereunder, only a portion of property in such trust passes under the residuary clause. If, on the other hand, one or more of the exercises of power of appointment shown on Exhibits 3, 4, 5, and 6, attached to this bill for declaratory decree, were ineffective or invalid for any reason, then additional portions of the trust property passes under the residuary clause of the decedent's will.

In this connection plaintiffs respectfully allege that each of the several alleged exercises of powers, shown on exhibits 3, 4, 5, and 6, attached to this bill for declaratory decree, is testamentary in character and each provides it is not to take effect until after the death of the settlor the said Dora Browning Donner. Thus, since each is testamentary in form, each must be executed in the manner required by the applicable law for testamentary dispositions. Questions have arisen as to which is the proper law to be applied; whether the law of Pennsylvania where the settlor resided at the time the trust was created and at the time the first two of the exercises were made, or the law of Florida to which she later moved her domicile and where she exercised the last two alleged powers of appointment above mentioned, or the law Delaware where the trustee has its place of business, the law of each of such states varying on the point in question, Florida and Delaware requiring two witnesses for testamentary dispositions and Pennsylvania none. Revocation of a testamentary instrument may also be made under the laws of Pennsylvania by an unattested written instrument signed by a testator. In the case of each of the exercises here in question, there was only one witness.

Unless the Court shall by its decree determine what portion of the trust property passes under the residuary clause of the decedent's will, plaintiffs are without remedy; similarly, if any such exercises are invalid, whereby certain property of the trust become assets of the residuary estate of the decedent, it is important to capture the same for the benefit of the estate prior to the discharge of the defendant executrix who has filed to take any steps to do so, and who takes the position that all of such exercises are valid and fully effective.

WHEREFORE, Plaintiffs, pray:

1. That the Court construe and determine the question of what portion of the trust property involved herein passes under the residuary clause of the will of the decedent.
2. That the Court grant such further or supplemental relief as may be necessary or proper.

C. ROBERT BURNS
Harvey Building
West Palm Beach, Florida
REDFEARN & FERRELL
By D. H. REDFEARN
Attorneys for Plaintiffs
550 Brickell Avenue
Miami, Florida.

ELWYN L. MIDDLETON, being sworn by me, the undersigned officer, says on oath that the statements contained in the foregoing bill for declaratory decree are true.

ELWYN L. MIDDLETON.

Sworn to and subscribed before me this 21st day of January, 1954.

LOUISE A. KRONENBERGER

FLORIDA DECREE.

Chanc.

Orders 234 Page 632

IN THE CIRCUIT COURT OF
THE FIFTEENTH JUDICIAL
CIRCUIT OF FLORIDA, IN AND
FOR PALM BEACH COUNTY.
IN CHANCERY.

KATHERINE N. R. DENCKLA,
etc., et al.,

Plaintiffs

-vs-

WILMINGTON TRUST COMPANY, a
Delaware corporation, et al.,

Defendants

No. 31,980.

SUMMARY FINAL DECREE.

This cause was duly presented by counsel for the parties upon motion for Summary Final Decree filed by plaintiff November 19, 1954 and Motion for Summary Decree filed by certain defendants on December 3, 1954.

Only questions of law are presented. The facts are simple and undisputed. No useful purpose would be served in stating them.

Two principal questions are presented, first, jurisdiction as against those whom a decree pro confesso has been entered; secondly, the authority of an executrix of a Florida will concerning certain assets now

located in Delaware and purported to be held under a declaration of trust and power of appointment executed by the testator.

As to jurisdiction, the trust assets and the trustees are in Delaware. No personal service has been had upon the defendants who failed to answer. The inclusion of the trust assets in her inventory, and an allowance of counsel fees and compensation for the executrix, although such an inclusion was later sought to be withdrawn, does not of itself give this court jurisdiction over these assets in Delaware or the Trustees. Hence, this court considers that it has no jurisdiction over the non-answering defendants.

Concerning the declaration of trust dated March 25, 1935, and particularly the power of appointment dated December 3, 1949, no present interest passed to any beneficiary other than the Trustor (Testatrix). It seems clear to me, from the authorities, that the power of appointment was testamentary in character and did not constitute a valid inter vivos trust appointment. As the appointment had only one subscribing witness, rather than two, as required in Florida, it did not constitute a valid testamentary disposition. Hence, the executrix should receive the assets and dispose of them agreeable to the will under which she was appointed.

THEREUPON, IT IS ORDERED that this cause be dismissed, without prejudice, as to the non-answering defendants; that the Motion filed February 18, 1954, and the Motions for Summary Final Decree be granted to the extent embraced in this decree, and in other respects denied.

IT IS FURTHER ORDERED AND DECREED that, as to the parties now before the court, the assets held under the provisions of the trust agreement dated

March 25, 1935, between the decedent, Dora Browning Donner, and Wilmington Trust Company, as Trustee, and additions thereto, passed under the will of Dora Browning Donner, dated December 3, 1949, and disposition thereof is determined by the residuary clause of the will, which was admitted to probate in the County Judge's Court, in Palm Beach County, December 23, 1952.

IT IS FURTHER ORDERED that this court retain jurisdiction for the purpose of enforcing this decree and the settlement of any other questions that may properly arise in connection herewith, all with costs taxed against the executrix.

Copy furnished counsel.

DONE AND ORDERED this 14 day of January, A.D. 1955.

C. E. Chillingworth
Circuit Judge

**EXCERPTS FROM AFFIDAVIT OF MANLEY P.
CALDWELL.****(Dated March 30, 1955.)**

I am an attorney at law, practicing in Palm Beach County, Florida. I am one of the attorneys for Elizabeth Donner Hanson, individually, and as Executrix of the Will of Dora Browning Donner, deceased, and as guardian ad litem for Donner Hanson and Joseph Donner Winsor, and William Donner Roosevelt, individually, in that certain cause pending in the Circuit Court of Palm Beach County, Florida, In Chancery No. 31,980, styled Katherine N. R. Denckla, individually, et al, Plaintiffs, v. Wilmington Trust Company, a Delaware corporation, et al, Defendants.

On March 11, 1955 appeal was entered to the Supreme Court of Florida from summary final decree in the above case dated January 14, 1955.

* * *

EXCERPTS FROM AFFIDAVIT OF JOHN N. FARRELL.

(Dated April 18, 1955.)

I am an attorney at law, practicing in West Palm Beach, Palm Beach County, Florida. I am one of the attorneys for ELWYN L. MIDDLETON, as guardian of the property of Dorothy B. R. Stewart, in that certain cause pending in the Circuit Court in and for Palm Beach County, Florida, in Chancery Case No. 31980, entitled "KATHERINE N. R. DENCKLA, individually, et al., plaintiffs, versus WILMINGTON TRUST COMPANY, a Delaware corporation, et al., defendants".

* * *

Affiant has read the affidavit of Paul D. Lovett dated March 13, 1955, and particularly that portion thereof referring to the finding in the summary final decree entered in the above cause to the effect that the Florida court lacked jurisdiction over certain non-answering defendants. Appellees, on the 28th day of March, 1955, filed a cross assignment of error in said appeal, in words and figures as follows, to wit:

"CROSS ASSIGNMENT OF ERROR

"Come now the appellees, KATHERINE N. R. DENCKLA, individually, and ELWYN L. MIDDLETON, as guardian of the property of DOROTHY BROWNING STEWART, also known as Dorothy B. Stewart and Dorothy B. Rodgers Stewart, an incompetent person, and file this their assignment of error relating to the notice of appeal filed herein on March 11, 1955.

"1. The Court erred in its summary final decree dated January 14, 1955, in holding that it had no jurisdiction over the non-answering defendants."

The purpose of such cross assignment of error is to have the Supreme Court of Florida pass upon the contention of appellees that the Florida court, for the purposes of said suit, did have jurisdiction over the non-answering defendants in accordance with the provisions of Chapter 87, Florida Statutes 1953, relating to declaratory decrees, judgments and orders, and the provisions of Chapter 48, Florida Statutes 1953, relating to constructive service of process.

* * *

AFFIDAVIT OF JOSEPH W. CHINN, JR.

(Filed November 18, 1954.)

1. That at all times hereinafter mentioned, I have been an officer of the Wilmington Trust Company of Wilmington, Delaware, and I am presently a vice-president and trust officer thereof.

2. That on or about March 25, 1935, the Wilmington Trust Company (hereinafter "Trustee") executed in Wilmington, Delaware, an agreement dated March 25, 1935 between itself as Trustee and Dora Browning Donner (hereinafter "Trust Agreement") which created a trust with respect to securities described in Schedule A attached to the Trust Agreement and such other securities or property as might thereafter be received by the Trustee under the Trust Agreement. Either at the time when the Trust Agreement was executed by the Trustee or prior thereto, the same had been executed by Dora Browning Donner. A copy of the Trust Agreement (with Schedule A thereto) is attached to the complaint which was filed in the above action.

3. At or about the time when the Trust Agreement was executed by the Trustee, Dora Browning Donner assigned, transferred and delivered to the Trustee in Wilmington, Delaware, the securities listed on Schedule A attached to the Trust Agreement. From time to time Dora Browning Donner, acting in accordance with the terms of the Trust Agreement transferred additional sums of money and securities to the Trustee to be held by it under the Trust Agreement. Attached hereto and marked Exhibit A is a statement showing the character of such additions and the times when they were made. The securities initially

and subsequently so delivered were either endorsed or the Trustee received stock powers with respect thereto to the extent, if any, required to vest title thereto, in the Trustee; and the sums of money (represented by checks) subsequently transferred in trust were likewise delivered to the Trustee in Wilmington, Delaware. At no time was title to any of the securities listed in Schedule A or any other securities or property subsequently held in the corpus of the trust transferred by the Trustee to Dora Browning Donner or to anyone else, except (a) such transfers as were made from time to time in accordance with the direction of the advisor or advisors named in or designated pursuant to paragraph 5 (as amended from time to time) of the Trust Agreement, (b) such transfers as were effected subsequent to the death of Dora Browning Donner referred to in paragraph 10 hereof, and (c) the transfer of the \$75,000 to Dora Browning Donner referred to in paragraph 8 hereof.

4. That at all times from and after the establishment of the trust, the Trustee has held the title to the assets comprising the trust either in its own name or in the name of nominees who were at all times under its control, that all of such assets have at all times been located within the State of Delaware, and that all acts of the Trustee in administering the trust have taken place within the State of Delaware.

5. That by letter dated June 29, 1936 Dora Browning Donner nominated and appointed C. K. Baxter, and J. E. Hairsine, or either of them, to act as advisor in lieu of W. H. Donner, the advisor originally named in the Trust Agreement, and by letter dated October 14, 1937 Dora Browning Donner nominated and appointed C. K. Baxter, J. E. Hairsine and John Stewart, or any one of them, as such advisors.

The two letters became effective upon their receipt by the Trustee in Wilmington, Delaware. True and correct copies of such letters are attached hereto and marked Exhibits B and C respectively. By letter dated December 13, 1940, Dora Browning Donner amended paragraph 5 of the Trust Agreement which originally provided that the advisor of the trust should be William H. Donner or such other "person or persons" as Dora Browning Donner should nominate in writing delivered to the Trustee, so as to provide that the advisors should be Donner Estates, Inc., a Pennsylvania corporation, or such other "corporation, person or persons" as Dora Browning Donner might nominate in writing delivered to the Trustee, and to specify the compensation to be paid to "Donner Estates, Inc.," for acting as advisor. By letter dated February 5, 1946, Dora Browning Donner further amended paragraph 5 by changing the compensation to be paid to "Donner Estates, Inc., or any other advisor or advisors hereinafter nominated." Both the letters of December 13, 1940 and February 5, 1946 became effective upon their receipt and acceptance by the Trustee in Wilmington, Delaware. True and correct copies of the letters are attached hereto and marked Exhibits D and E respectively.

6. That the instruments executed by Dora Browning Donner on April 6, 1935, October 11, 1939, December 3, 1949 and July 7, 1950 (Exhibits E, F, C and D to the complaint herein, respectively), under which Dora Browning Donner exercised the power of appointment granted to her by the Trust Agreement became effective upon their delivery to the Trustee in Wilmington, Delaware, on or about the dates indicated by the signature of the Trustee appearing at the bottom of each of such instruments.

7. That although by paragraph 10 of the Trust Agreement Dora Browning Donner reserved the right to amend, alter or revoke the Agreement in whole or in part, the fact is that Dora Browning Donner never attempted to exercise such right, except for the amendments to paragraph 5 dealing with the advisor and its compensation made by the letters of December 13, 1940 and February 5, 1946 (Exhibit D and E hereto), and for the revocation of the trust as to \$75,000 thereof by letter dated April 2, 1947 (Exhibit F hereto).

8. That on or about April 2, 1947 Dora Browning Donner revoked the trust as to \$75,000 thereof (Exhibit F hereto) and the Trustee paid to Dora Browning Donner the sum of \$75,000 from the trust. This same amount was repaid to the Trustee by Dora Browning Donner on December 22, 1947 as a replacement of the amount previously withdrawn. As indicated by her letter dated December 22, 1947 addressed to the Trustee (Exhibit G hereto).

9. That at no time did Dora Browning Donner attempt to direct, suggest, consult with or advise the Trustee with respect to any phase of the administration of the trust, but on the contrary the Trustee performed all of its duties in accordance with its own best independent judgment, except in so far as it followed the instructions of the advisor or advisors acting in accordance with paragraph 5 of the Trust Agreement.

10. That I am advised that Dora Browning Donner died on November 20, 1952, that on that date the Trustee held under the Trust Agreement the assets having the values set forth on Exhibit H attached hereto, and that between January 9, 1953 and March

30, 1953 the Trustee, acting pursuant to instruments executed by Dora Browning Donner on December 3, 1949, and July 7, 1950 (Exhibits C and D attached to the Complaint herein), transferred and delivered the following sums of money to the following:

<i>Date</i>	<i>Amount</i>	<i>Distributed to</i>
January 9, 1953	\$ 2,000	Miriam V. Moyer
January 10, 1953	1,000	Dorothy Doyle
January 12, 1953	1,000	Mary Glackens
January 12, 1953	1,000	Walter Hamilton
January 12, 1953	1,000	James Smith
January 12, 1953	1,000	Ruth Brenner
February 11, 1953	10,000	Bryn Mawr Hospital

That of the aforementioned persons, I am advised that Dorothy Doyle, Mary Glackens, and Ruth Brenner were servants who had been in the employment of Dora Browning Donner for more than two years at the time of her death and hence were the persons entitled under paragraph 2(a)(iv) of the instrument dated December 3, 1949 to the payments so made to them; that on March 30, 1953 the Trustee assigned, transferred and delivered securities and cash having an aggregate value of \$200,000 to the Delaware Trust Company, Trustee under Agreement dated November 26, 1948, with Elizabeth Donner Hanson, for Donner Hanson and others, and received therefor a receipt and release, a copy of which is attached hereto and marked Exhibit I; and that on March 30, 1953 the Trustee assigned, transferred and delivered to the Delaware Trust Company, Trustee under agreement dated November 26, 1948 with Elizabeth Donner Hanson, for Joseph Donner Winsor and others, securities and cash having an aggregate value of \$200,000 and received therefor a receipt and release, a copy of

which is attached hereto and marked Exhibit J; and that on or about February 18, 1954, Trustee deposited the sum of \$455,777.81 in the Wilmington Trust Company for the account of Elizabeth Donner Hanson, Executrix of Dora Browning Donner, in accordance with instructions from William H. Foulk, Esq., whom I am advised was acting as attorney for Elizabeth Donner Hanson, Executrix.

11. That on July 28, 1954 when the complaint in the above action was filed, the Trustee held under the Trust Agreement securities and monies all of which were located within the State of Delaware; and at all times since the institution of the action the Trustee has held securities and cash under the Trust Agreement in Wilmington, Delaware.

12. That the Trustee has no office or other place of business outside of the State of Delaware and transacts no business outside of this state.

13. That the Trust Agreement is one of two trust agreements between Dora Browning Donner and the Wilmington Trust Company under which the latter acted as Trustee, and at no time either before or after March 25, 1935 has Dora Browning Donner had an agency account of any kind with the Wilmington Trust Company.

14. That when assets held under the Trust Agreement were purchased and sold it was not the practice of the Trustee to advise Dora Browning Donner of the transactions, but information as to portfolio changes were given to the advisor periodically every three months as is customarily done by the Wilmington Trust Company as Trustee under many other trusts in giving advice as to investment changes.

15. That during the time when Donner Estates, Inc. (the name of which was subsequently changed to The Donner Corporation) was acting as advisor under paragraph 5 of the Trust Agreement, the individuals who acted on behalf of the corporate advisor in its relations with the Trustee were C. K. Baxter, John Stewart, H. R. Baxter and Edward V. Kruger.

16. That it was not until after January 1, 1954 that Wilmington Trust Company was advised that the validity or effectiveness of the Trust Agreement or the exercises of the power of appointment thereunder by Dora Browning Donner were or would be assailed by Dora Stewart Lewis, Mary Washington Stewart Borie, Paula Browning Denckla, Katherine N. R. Denckla, Elwyn L. Middleton, as guardian of the property of Dorothy B. R. Stewart or by anyone else.

/s/ Joseph W. Chinn, Jr.

Sworn to and subscribed before me the day and year first above written.

/s/ Marion K. Graham
Notary Public

(Notarial Seal)

EXHIBIT A.*Supplements to the Original Corpus*

OMITTED

* * *

EXHIBIT B.**WILLIAM H. DONNER**

1616 Walnut Street

Philadelphia

June 29, 1936

Wilmington Trust Company

Wilmington

Delaware

Gentlemen:

Under my trust, your #2152, which I have established with you, Mr. W. H. Donner is named as the adviser. Since Mr. Donner will be away until October 15th, I wish to nominate and appoint in his place and stead Mr. C. K. Baxter and Mr. J. E. Hairsine, or either of them, who during his absence shall have the right to direct the sale, exchange or disposal of any of the securities or properties held at any time in my trust, and who shall have the right to select or approve any and all investments to be made in connection with the management of the trust estates.

I hereby reserve the right to alter, modify or revoke these instructions.

Yours very truly,

Dora B. Donner.

Specimen Signatures:

C. K. Baxter

J. S. Hairsine

EXHIBIT C.

JOHN E. HAIRSINE

1616 Walnut Street

Philadelphia

October 14, 1937

Wilmington Trust Company,

Wilmington

Delaware

Gentlemen:

In my trust, your #2152, Dora B. Donner, I have the power to nominate and appoint such person or persons who shall have the power to direct the sale, exchange or disposal of any of the securities or properties held at any time in the trust, and the right to select and approve any and all reinvestments to be made in connection with the management of the trust estate.

In the exercise of this power I hereby nominate and appoint Mr. C. K. Baxter, Mr. J. E. Hairsine, and Mr. John Stewart, or any one of them, who shall have the right to direct the sale, exchange or disposal of any of the securities or properties held at any time in the trust, and who shall have the right to select or approve any and all reinvestments to be made in connection with the management of the trust estate.

I hereby reserve the right to alter, modify and revoke these instructions.

Yours very truly,

Dora B. Donner

EXHIBIT D.

December 13, 1940

Wilmington Trust Company
Wilmington, Delaware

In re: Trust No. 2152, Dora Browning Donner

Gentlemen:

On March 25th, 1935, I, as Trustor, did execute and deliver to your company a certain written Trust Agreement wherein I transferred, assigned, and delivered to your company as Trustee upon the terms, conditions, and stipulations and for the uses and purposes therein designated and set forth, certain securities the income and dividends from which were to be paid and distributed by your company as Trustee and in the manner set forth and provided in said Trust Agreement.

In paragraph #10 of said Agreement, I reserved the right "to amend, alter, or revoke this Agreement in whole or in part at any time by written instrument signed by the principal and delivered to the Trustee."

In the exercise of my power, I hereby amend paragraph #5 to read as follows: "The Adviser of the trust shall be Donner Estates, Inc., a corporation organized under the laws of the Commonwealth of Pennsylvania, or such other corporation, person, or persons as the Trustor may nominate in writing delivered to the Trustee during her lifetime, and such other corporation, person, or persons so nominated shall become the Adviser or Advisers of this trust at such time and upon the happening of such conditions as the said Trustor may specify in writing.

Donner Estates, Inc. shall be entitled to receive an annual fee in an amount to be agreed upon by it and the Trustee not to exceed \$400.00, such fee to be charged against the income of the trust."

I hereby ratify and confirm said Trust Agreement dated March 25th, 1935 in all other respects.

IN WITNESS WHEREOF, I, the said Dora Browning Donner, have hereunto set my hand and seal this 13th day of December, A.D. 1940.

Very truly yours,

Dora Browning Donner

EXHIBIT E.

Wilmington Trust Company
Wilmington
Delaware

Trust No. 2152, Dora Browning Donner

Gentlemen:

On March 25, 1935, I, as Trustor, did execute and deliver to your company a certain written Trust Agreement wherein I transferred, assigned, and delivered to your company as Trustee upon the terms, conditions and stipulations and for the uses and purposes therein designated and set forth, certain securities the income and dividends from which were to be paid and distributed by your company as Trustee and in the manner set forth and provided in said Trust Agreement.

In paragraph #10 of said Agreement, I reserved "the right to amend, alter or revoke this agreement in whole or in part at any time or times by written instrument signed by the principal and delivered to Trustee."

In the exercise of my power, under date of December 13, 1940, I amended paragraph #5 of said agreement by designating Donner Estates, Inc., a corporation organized under the laws of the Commonwealth of Pennsylvania, or such other corporation, person, or persons as I might nominate in writing, delivered to the Trustee during my lifetime, as the adviser of the trust; and further provided that "Donner Estates, Inc. shall be entitled to receive an annual fee in an amount to be agreed upon by it and the Trustee not to exceed \$400.00, such fee to be charged against the income of the trust."

2

In the further exercise of my power to amend, alter or revoke said trust agreement, as hereinbefore provided, I hereby further amend paragraph #5 by substituting in lieu of the paragraph hereinabove quoted, the following:

“Donner Estates, Inc., and any adviser or advisers hereinafter nominated as hereinbefore provided, shall be paid for its services out of the income of said trust fund an annual fee based upon \$125.00 on each \$100,000.00 of asset value in the trust. The asset value for this purpose shall be determined to be the mean between the reasonable asset value on January 1 and December 31 of each year. In calculating the compensation on asset value so determined the minimum fee shall be \$125.00 per annum and whenever, on such valuation dates, the asset value exceeds \$100,000.00, the excess over units of \$100,000.00 shall, if less than \$50,000.00 be discharged, and if more than \$50,000.00, shall be regarded as a full unit of \$100,000.00. Said compensation shall be paid out of the income of the trust fund in quarterly instalments on the tenth days of February, May, August, and November in each year, commencing with the calendar year 1946, said quarterly payments to be based on the asset value of the trust for the preceding year. When the asset value and the compensation are finally and accurately determined in the aforesaid manner for any year, any underpayment or overpayment of compensation which may have resulted from quarterly payments based on the prior year's valuation shall be deducted from or added to, as the case may be, the first quarterly payment of the succeeding year. The Trustee may rely conclusively upon certifica-

tions made by said adviser as to the aggregate reasonable value of the trust assets on which its compensation is based, and the Trustee shall in no event be required to recover any overpayment of compensation unless it is possible to do so in the manner hereinbefore provided."

I hereby ratify and confirm said Trust Agreement dated March 25, 1935, in all other respects.

IN WITNESS WHEREOF, I, the said Dora Browning Donner, have hereunto set my hand and seal this 5th day of February 1946.

Very truly yours,

Dora Browning Donner

ACCEPTED:

WILMINGTON TRUST COMPANY

By: Jos. W. Chinn, Jr.
Vice-President

EXHIBIT F.

COPY

Wilmington Trust Company,
Wilmington, Delaware

Your Trust #2152

Gentlemen:

I, the undersigned, in the exercise of the power conferred upon me in Paragraph 10 of that certain trust agreement which I entered into with you on the twenty-fifth day of March 1935 do hereby revoke and terminate said trust with respect to the following described property, constituting part of the property now held subject to said trust, the receipt of which property is hereby acknowledged, and do release and discharge you from any further liability or accountability as Trustee of said property hereby withdrawn:

Seventy-five thousand dollars cash

(\$75,000.00)

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this Second day of April A.D. 1947.

WITNESS:

/s/ W. H. Donner

/s/ Dora B. Donner (SEAL)

EXHIBIT G.

1710 Fidelity-Philadelphia Trust Building
123 South Broad Street
Philadelphia 9, Pa.

December 22, 1947

COPY

Wilmington Trust Company
Wilmington, Delaware

Attention: Mr. G. P. Bissell, Jr.

Dear Sirs:

I herewith hand you check in the amount of \$75,000.00 drawn to the order of the Wilmington Trust Company.

These funds should be added to my revocable trust number 2152 as a replacement of the funds that I withdrew from this same trust on April 2nd last.

Very truly yours,

/s/ Dora B Donner
(Mrs. Dora B. Donner)

Enclosure

EXHIBIT H.

Assets in Account #2152—Tt. U/A with Dora Browning Donner dated 3/25/35 for Dora Browning Donner

OMITTED

* * *

Market Value as of 11/20/52

* * *

Principal Cash

\$1,466,550.75
27,079.16

EXHIBIT I.

KNOW ALL MEN BY THESE PRESENTS,
That The DELAWARE TRUST COMPANY, a corporation of the State of Delaware, Trustee under Agreement dated November 26, 1948 with Elizabeth Donner Hanson for Donner Hanson, does hereby acknowledge to have received of and from Wilmington Trust Company, a Delaware corporation, Trustee under agreement with Dora Browning Donner dated March 25, 1935, in full payment and satisfaction of all monies, property, debts, credits due or owing to it from Wilmington Trust Company, as such Trustee, in accordance with the terms of the agreement, the following securities and cash:—

400 shs.	Air Associates Inc.	@	8 $\frac{1}{4}$	\$ 3,300.00
	common			
100 "	Blockson Chemical	@	25 $\frac{1}{8}$	2,512.50
	Co. common			
330 "	Citizens Utilities	@	13 $\frac{3}{8}$	4,413.75
	Co. common			
100 "	Colorado Inter-	@	30 $\frac{1}{4}$	3,025.00
	state Gas Co.			
	common			
1,200 "	Connecticut Filter	@	1	1,200.00
	Corp. common			
66 "	Cuno Engineering	@	40	2,640.00
	Corp. common			
720 "	Deep Rock Oil	@	45 $\frac{7}{8}$	33,030.00
	Corp. common			
100 "	Hillsboro Planta-	@	42	4,200.00
	tion, Inc., common			
400 "	Mountain States	@	13 $\frac{1}{2}$	5,400.00
	Power Co. common			

1,000	"	N. Y. Chicago & St. Louis R.R. com.	@	42 $\frac{5}{8}$	42,625.00
50	"	St. Joseph Lead Co. common	@	39-9/16	1,978.13
1,200	"	Savannah Electric & Power Co. com.	@	42 $\frac{1}{2}$	51,000.00
200	"	West Penn Electric Co. common	@	35 $\frac{1}{4}$	7,050.00
48	"	Cuno Engineering Corp. non cum. Class A	@	70	3,360.00
72	"	Hillsboro Plantation, Inc. 5% pfd.	@	100	7,200.00
50	"	Western N. Y. Water Co. non cum. 5% pfd.	@	100	5,000.00
\$14,000		Hillsboro Plantation, Inc. 4% note dated 3/11/49	@	100	14,000.00
3,000		Hillsboro Plantation Inc. 5% note dated 9/1/50	@	100	3,000.00
5,000		Hillsboro Plantation Inc. 5% debenture bonds	@	100	5,000.00
\$65.62		Principal Cash			65.62
					<hr/> \$200,000.00

AND Delaware Trust Company, Trustee as aforesaid, does hereby release and forever discharge the said Wilmington Trust Company Trustee as aforesaid, of and from all actions, suits, accounts and demands whatsoever, for or concerning the said Trusteeship, from the beginning of the world to the day of the date hereof.

IN WITNESS WHEREOF, the said Delaware Trust Company, Trustee as aforesaid, has caused the hand of its Vice President to be hereunto set and its corporate seal, duly attested, to be hereunto affixed, this 30th day of March.A.D. Nineteen Hundred and Fifty-Three, 1953.

DELAWARE TRUST COMPANY

By Paul D. Lovett
Vice President

Attest

Lindsay Greenplate
Assistant Secretary

* * *

KNOW ALL MEN BY THESE PRESENTS, That the DELAWARE TRUST COMPANY, a corporation of the State of Delaware, Trustee under Agreement dated November 26, 1948 with Elizabeth Donner Hanson for Joseph Donner Winsor, does hereby acknowledge to have received of and from Wilmington Trust Company, a Delaware corporation, Trustee under agreement with Dora Browning Donner dated March 25, 1935, in full payment and satisfaction of all monies, property, debts, credits due or owing to it from Wilmington Trust Company, as such Trustee, in accordance with the terms of the agreement, the following securities and cash:—

400 shs.	Air Associates Inc.	@	8 $\frac{1}{4}$	\$ 3,300.0
	common			
100 "	Blockson Chemical	@	25 $\frac{1}{8}$	2,512.50
	Co., common			
330 "	Citizens Utilities	@	13 $\frac{3}{8}$	4,413.75
	Co. common			
100 "	Colorado Inter-	@	30 $\frac{1}{4}$	3,025.00
	state Gas Co. com.			
1,200 "	Connecticut Filter	@	1	1,200.00
	Corp. common			

66	"	Cuno Engineering Corp. common	@ 40	2,640.00
720	"	Deep Rock Oil Corp. common	@ 45 $\frac{7}{8}$	33,030.00
100	"	Hillsboro Plantation, Inc., common	@ 42	4,200.00
400	"	Mountain States Power Co. common	@ 13 $\frac{1}{2}$	5,400.00
1,000	"	N. Y. Chicago & St. Louis R.R. com.	@ 42 $\frac{5}{8}$	42,625.00
50	"	St. Joseph Lead Co. common	@ 39-9/16	1,978.13
1,200	"	Savannah Electric & Power Co. common	@ 42 $\frac{1}{2}$	51,000.00
200	"	West Penn Electric Co. common	@ 35 $\frac{1}{4}$	7,050.00
48	"	Cuno Engineering Corp. non cum. Class A	@ 70	3,360.00
72	"	Hillsboro Plantation, Inc 5% pfd.	@ 100	7,200.00
50	"	Western N. Y. Water Co. non cum. 5% pfd.	@ 100	5,000.00
\$14,000		Hillsboro Plantation, Inc. 4% note dated 3/11/49	@ 100	14,000.00
3,000		Hillsboro Plantation, Inc. 5% note dated 9/1/50	@ 100	3,000.00
5,000		Hillsboro Plantation, Inc. 5% debenture bonds	@ 100	5,000.00
\$65.62		Principal Cash		65.62
				<hr/> \$200,000.00

/AND Delaware Trust Company, Trustee as aforesaid, does hereby release and forever discharge the said Wilmington Trust Company, Trustee as aforesaid, of and from all actions, suits, accounts and demands whatsoever, for or concerning the said Trusteeship, from the beginning of the world to the day of the date hereof.

IN WITNESS WHEREOF, the said Delaware Trust Company, Trustee as aforesaid, has caused the hand of its Vice President to be hereunto set and its corporate seal, duly attested, to be hereunto affixed, this 30th day of March A.D. Nineteen Hundred and Fifty-Three, 1953.

DELAWARE TRUST COMPANY

By Paul D. Lovett

Vice President

Attest.

Lindsay Greenplaae

Assistant Secretary

EXCERPTS FROM AFFIDAVIT OF C. KENNETH BAXTER.

(Dated November 12, 1954.)

I was graduated from Yale University in 1926. Following my graduation I worked in the securities business with Eastman Dillon & Co. until 1931. Thereafter I was employed until September 1940 as an investment advisor by William H. Donner, the husband of Dora Browning Donner, and/or members of his family and/or companies owned or controlled by them. I thereupon became employed as secretary and treasurer of Donner Estates, Inc., and from time to time thereafter I served as secretary and treasurer of Donner Estates, Inc., as vice president, and since January 1, 1950 as president.

2. Donner Estates, Inc., was incorporated on September 11, 1940 by Dora Donner Ide to act as investment counsel to the trustees under a number of trusts created by William H. Donner and by certain members of his family. Its name was changed to the Donner Corporation on June 5, 1947. Its stock, consisting of 100 shares of par value of \$10.00 each was originally owned by Dora Donner Ide (a daughter of William H. Donner and Dora Browning Donner). On or about October 28, 1940, Dora Donner Ide transferred the shares of Donner Estates, Inc., to the Wilmington Trust Company as trustee for the benefit of the issue *per stirpes* and not *per capita* of William H. Donner. The "issue" were defined in the agreement to include Dorothy B. R. Stewart and Katherine N. R. Denckla who had theretofore been legally adopted by William H. Donner.

3. From 1931 until the present my activities and business and personal relationship with William H. Donner and members of his family were such that I became intimately familiar with the terms of and the assets included in the numerous trusts created by William H. Donner and by certain members of his family, as well as the marital and blood relationships which existed in the Donner family.

4. The first wife of William H. Donner was Adella May Newson. They had two children, Robert N. Donner and Joseph W. Donner. Joseph W. Donner in turn had two children, Joseph W. Donner, Jr., and Carroll E. Donner, Jr. I am advised that none of the aforementioned issue of William H. and Adella May Donner are involved in the above litigation.

5. William H. Donner and Adella May Donner were divorced in 1907, and on March 27, 1909, William H. Donner married Dora Browning Rodgers. The latter was the widow of J. Norwood Rodgers who died on January 20, 1905. Dora Browning Rodgers had two children by J. Norwood Rodgers, Katherine N. Rodgers who married Paul Denckla, and Dorothy B. Rodgers who married John Stewart. Paul Denckla and Katherine N. Rodgers Denckla had two children, Paula Browning Denckla and William Donner Denckla. John Stewart and Dorothy B. Rodgers Stewart had two children, Dora Stewart who married Lawrence Lewis, Jr., and Mary Washington Stewart who married David Boyde Borie.

6. Following the marriage of William H. Donner and Dora Browning Rodgers the following children were born to them: Elizabeth Donner, Dora Donner, and William H. Donner, Jr. The latter died without issue. Elizabeth Donner married Elliott Roosevelt and had one child by him, William Donner Roosevelt. Fol-

Following a divorce, Elizabeth Donner married Curtin Winsor and had two children by him, Curtin Winsor, Jr., and Joseph Donner Winsor. Again following a divorce, Elizabeth Donner married Benedict Hanson and by him had one child, Donner Hanson. Dora Donner married John Jay Ide and they have no children. William H. Donner died on November 3, 1953 and Dora Browning Donner died on November 20, 1952.

7. John Stewart, who married Dorothy B. Rodgers; was president of the Donner Corporation from October 1940 to December 31, 1949. Prior to becoming president of the Donner Corporation he had been in the securities business for a period of over fifteen years, first with Cassatt & Co. and later with E. A. Pierce & Co.

8. J. Edward Hairsine was employed by William H. Donner on January 1, 1934, and for a short time as vice president of Donner Estates, Inc., following its incorporation on September 11, 1940. Prior to his employment by William H. Donner, Hairsine had been employed by the Trust Department of the Wilmington Trust Company for a number of years. His principal duties with William H. Donner and Donner Estates, Inc., related to taxation and accounting, but some of his time was devoted to studying investments with William H. Donner and myself. Hairsine severed all connections with the Donner family and Donner Estates, Inc., in 1940 when he was replaced by John Stewart.

9. I am familiar with the fact that Dora Browning Donner entered into an agreement of trust dated March 25, 1935 with the Wilmington Trust Company, as trustee, and I am familiar with the terms of that agreement. The value of the assets transferred to the trustee at the time of the creation of the trust was

approximately \$291,420.85. Prior to December 13, 1940 the persons acting as advisors to the trustee under paragraph 5 of the agreement were successively William H. Donner; Hairsine and myself or either of us; and Hairsine, John Stewart and myself, or any of us. On December 13, 1940 Donner Estates, Inc. was named as advisor under paragraph 5 and thereafter acted in that capacity. The officers of Donner Estates, Inc. (since June 5, 1947, the Donner Corporation) who from time to time were authorized to act on its behalf in performing its functions as advisor under paragraph 5 of the trust agreement dated March 25, 1935 were John Stewart, John E. Hairsine, John T. Lyons, H. R. Baxter, Edgar V. Kruger, W. R. Yarnall and myself. None of such persons, with the exception of John Stewart, were in any way related to Dora Browning Donner. Dora Browning Donner was at no time either an officer, director or stockholder of the corporation.

* * *

(2) **EXCERPTS FROM DEPOSITION OF THE
WITNESS GEORGE P. BISSELL, JR., TAKEN
BY MARVEL DEFENDANTS.**

(December 28, 1954.)

GEORGE P. BISSELL, JR., called as a witness by the Marvel defendants, being first duly sworn by the Notary Public, testified as follows:

DIRECT EXAMINATION

By MR. MARVEL:

Q. Mr. Bissell, will you state for the record your name and address?

A. George P. Bissell, Jr., Greenville, Delaware.

Q. Will you also state your position?

A. Assistant vice president of the Wilmington Trust Company.

Q. How long have you been assistant vice president of the Wilmington Trust Company?

A. Since the summer of 1952.

Q. Were you employed by the Wilmington Trust Company (3) prior to that time?

A. I was, sir.

Q. When were you first employed by the Wilmington Trust Company?

A. July 1, 1942.

Q. And in what department of the Wilmington Trust Company were you employed in July, 1942?

A. In the auditing department.

Q. How long did you remain in that department?

A. Until the spring of 1943.

Q. And you were transferred to another department?

A. Yes, sir, I was, sir, to the trust department under Mr. Bancroft as head of the investment division.

Q. You have remained in the trust department of the Wilmington Trust Company since July, 1943?

A. Yes, sir.

Q. In that department what are your duties generally?

A. My present duties?

Q. Well, let's start back at July, 1943.

A. My duties at that time were confined largely to handling the so-called Donner trusts with us, the proxies and the various trust accounts in the bank, as well as checking brokers' confirmations involving sales and purchases for the (4) trust department.

Q. So as early as July, 1943, you became familiar with the various agreements between the Wilmington Trust Company and the Donner family?

A. That's correct, sir.

* * *

Q. You did familiarize yourself with the terms of that agreement of March 25, 1935, made by Dora Browning Donner?

A. That's correct.

* * *

(5) Q. Can you tell me exactly what if anything you had to do at that time—that is starting in July, 1943—with the securities and investments which were made under the terms of this particular agreement of March 25, 1953?

A. Well, the setup at that time was that the confirmations on sales and purchases in this trust as well as other Donner trusts would come in marked for my attention, with no designation as to the particular trust or trusts involved. Within a day or two of the receipt of those confirmations a letter would be received from The Donner Estates which of course is now The Donner Corporation.

They, as advisor to this particular trust and other Donner trusts, would authorize such sales and pur-

chases to be explained in the confirmations that I had received previously. We would then put the proper trust number on the confirmation and deliver it to our security cage in the case of a sale so that they might make delivery of the securities, and in the case of a purchase so that they might transmit a check to the broker.

Q. Maybe it would simplify things by my asking you this: (6) You stated that you had various numbers on trusts.

A. That's right, sir.

Q. Could you state the number of this particular trust?

A. I can. Trust number 2152.

Q. Hereafter we will refer to this trust as number 2152.

A. All right, sir.

Q. You stated that you received confirmations of orders either for sales or purchases. Do you know who authorized those sales or purchases with respect to trust 2152?

A. The sales or purchases were made by The Donner Corporation and the various brokers. The confirmations would be for the most part—would come to us "The Donner trusts, care of Wilmington Trust Company, Wilmington, Delaware", my attention. We did not execute the orders, sir.

Q. At that time The Donner Corporation, which as you stated prior to 1947 was Donner Estates—

A. Yes, sir.

Q. (Continuing) was the advisor under the terms of this agreement 2152?

A. The Donner Estates was the advisor of that particular trust.

Q. And The Donner Estates and The Donner Corporation are—

(7) A. Are one and the same.

Q. Are one and the same. It was merely a change of name in 1947?

A. In 1947. That's correct.

* * *

(11) Q. Mr. Bissell, you say you received confirmations of any instructions. What do you mean by confirmations of sales or purchases?

A. Well, Mr. Marvel, I think that you may not be talking of the same subject. The confirmations I referred to as brokers' statements.

Q. Yes.

A. We would receive those and within a day or so after the receipt of those brokers' confirmations a letter would be received from Donner Estates authorizing the sale or purchase in the particular trust involved, so that we would know which trust to assign this brokers' statement to. We would have no idea; it would not be designated on the brokers' statement at all.

Q. Yes. Therefore you took no action until you received specific instructions from The Donner Corporation?

A. That's entirely correct.

Q. Did the Wilmington Trust Company initiate the sales or purchases which were reflected in the confirmation slips?

(12) A. No, sir.

Q. Which arrived prior to the instructions?

A. No, sir.

Q. Do you know who did initiate those sales and purchases?

A. I am quite sure that the—one of the several Officers of The Donner Corporation would do that.

Q. Do you know whether it was one of the advisors of this trust.

A. I wouldn't know, Mr. Marvel, because certain men at The Donner Corporation—they specialize in certain, shall we say, investment fields. One man may be responsible for municipals, and another for industrials.

Q. But the fact is that the Wilmington Trust Company didn't initiate any sales, purchases or exchanges of securities that were held in this account?

A. No, sir.

Mr. Steel: You are addressing that question, Mr. Marvel, to what particular period?

By Mr. Marvel:

Q. To the period you know about, and I assume that is the period from July, 1943, to December 28, 1954.

A. Yes, that's correct.

(13) Mr. Marvel: I hand you what I will ask the reporter to mark as exhibit 1.

(Four sheets of paper being forms of The Donner Corporation were marked Exhibit (Bissell) 1.)

By Mr. Marvel:

Q. I hand you exhibit ((Bissell) 1, consisting of four sheets of paper pinned together, and ask you whether you can state what those are.

A. I can state what the top sheet is. This is identical to the letters of authorization, or instructions, I should say, from The Donner Corporation regarding transactions in the trusts here in the Wilmington Trust Company. I have never seen the second copy.

Q. It is obviously a file copy of some sort?

A. It is obviously a file copy of some sort, but I have never seen it, nor have I seen the yellow one.

Q. And the yellow one is similar to the top one?

A. It is, sir.

Q. Confining yourself to the top one which is the one you say you are familiar with and have seen—

A. That's correct.

Q. (Continuing) and is identical with the form on which instructions were sent to the Wilmington Trust Company—

(14) A. That's right.

Q. (Continuing) briefly could you describe, using a hypothetical security, the manner in which those forms came to Wilmington Trust Company?

A. All right. They would be dated. Wilmington Trust Company, Wilmington 99, Delaware, attention G. P. Bissell, Jr. In the left hand column, if the security were purchased by The Donner Corporation, would be a B. If it were a sale, it would be an S symbol. The trust account would be any particular trust that the Donner Corporation has investment control over. Security would be 300 shares of XYZ corporation. Unit price would be \$32 a share. The dollar figure would never be mentioned. It would be the unit price. Broker would be Drexel and Company. It would be signed by an officer of The Donner Corporation.

Q. Upon receipt of such an instruction what would you do?

A. I would secure the confirmation, the broker's confirmation, and write on that trust number so-and-so conforming with the instructions in The Donner Corporation's letter. That broker's confirmation would then be given to our securities cage for them to take over from that time on, it having been initialed by me which would mean that we had the proper authority to carry out the transaction. The cage would rely upon an officer's initials. He would know what authorization (15) is required.

Q. "To carry out the transaction" would be the mechanical procedures necessary to conclude either a

sale or a purchase of the security concerning which you had received instructions?

A. That's right.

Q. In other words you follow through with the mechanical details necessary to carry out those instructions on that form?

A. That would be substantially correct, yes, sir.

Q. And that was true either with respect to a sale or a purchase or an exchange of securities?

A. Yes. A purchase and sale. As to exchange, you mean for example a stock was split two for one, and you had to send off a certificate in exchange to receive back others? I don't follow what you mean.

Q. No, I wasn't thinking of a split in a security as to the number of shares. I will perhaps make it clearer by saying that in a purchase of securities sometimes it was necessary to acquire the money to pay for it, and as a result something, a stock or security, was sold, and the proceeds of that were used to purchase a different type of security.

A. Yes, that happened. Oh, I see what you mean—exchange from one security to another.

Q. That's right.

(16) A. Oh, yes, sir.

Q. Whenever that was done the same form of instruction was sent to you by The Donner Corporation?

A. That's correct.

Q. And you followed out the mechanical details to conform with that, to accomplish that instruction?

A. Yes, sir.

Q. I ask you, did the Wilmington Trust Company by its own act, without instructions from The Donner Corporation during the period from July, 1943, to the present date, sell, purchase or exchange any securities constituting this fund in this agreement number 2152?

A. I can recollect no such transactions as you outline (17) that the Wilmington Trust Company initiated.

Mr. Steel: You mean other than pursuant to instructions?

Mr. Marvel: That was in my question.

Mr. Steel: Yes.

The Witness: I can recall none, sir.

By Mr. Marvel:

Q. In other words you did nothing with respect to the investment of this fund without receiving specific instructions from the advosir?

A. That is my distinct recollection, yes, sir.

Q. Have you any recollection of any time when that did not happen?

A. I do not, no, sir. I think I would recollect, because it would be so unusual—it wouldn't be in accordance with the terms of the agreement—that I think I would recall if it happened.

Q. You do not recall any such instance?

A. I do not recall any such instance.

Q. And you were satisfied that you would have recalled it, had it occurred?

A. I think I would, sir.

Q. Now, Mr. Bissell, these securities which constituted (18) this fund existed in part of common stocks, did they not?

A. Yes, sir.

Q. And those common stocks had the right to vote at meetings of the corporations whose shares they were?

A. Yes, sir.

Q. And consequently it became necessary to determine whether to vote or not to vote those shares at various times?

A. Well, I think it would be better to have our policy on what we did with proxies of the Donner trusts, and this one in particular.

Q. All right. I will let you state for the record exactly what you did with proxies and voting rights which these shares had which were in this fund.

A. From the summer of 1943 to date it has been our policy to execute proxies to—in this case it would be Lack and Lindsay, which are our nominees which we have used since around 1945. To register securities and stocks you would execute a proxy covering X number of shares of XYZ company, and you would forward that executed proxy by letter to the Donner Corporation in Philadelphia, stating to this effect, that we presume that if they wish the shares represented at the meeting to be held on such and such a date, they would forward it directly to the company.

* * *

(19) The Witness: Stating that we presumed if they wished it represented at the meeting they would forward it to the company.

By Mr. Marvel:

Q. In other words, Mr. Bissell, the Wilmington Trust Company did not vote any of these shares at any meetings, did they?

A. No, sir.

Q. Will you describe the manner in which these securities constituting this fund of trust number 2152 were held? In other words, in whose names?

(20) A. All right, sir. From about 1943, the period again that I am familiar with, to around 1945, stocks were registered in the name of Wilmington Trust Company. Some time around 1945 or thereabouts the Legislature enacted into a law that banks might use nominees where the instruments did not specifically authorize you to do it.

Mr. Steel: Specifically, didn't prohibit you from doing it?

The Witness: Didn't prohibit you, yes.

We contacted The Donner Corporation at that time and said that it would certainly be helpful for all concerned if we might register all stocks in the name of Lack and Lindsay, which are good delivery against sale. The stocks registered in the name of Wilmington Trust Company are not good delivery against sale. They must be cleared, as we call it, by a broker before sale could be carried out.

The Donner Corporation said they had no objection to it, and we undertook at that time, which was quite a job, to re-register all securities in 2152. Included in "all securities", naturally in the case of bearer bonds we did nothing, of course.

By Mr. Marvel:

Q. Did The Donner Corporation instruct you specifically to register the shares in the name of Lack and Lindsay?

(21) A. My recollection is that we initiated this by writing them and suggesting that if they had no objections, would they permit us to do it. They said they had no objections at all and if we wanted to do it we could do it as far as they were concerned

Q. Now with respect to the proxy procedures which you have described, did The Donner Corporation instruct you to follow that procedure?

A. Mr. Marvel, all I can say is that it was the procedure being carried out at the time I was broken into this particular job. I do not know.

Q. You don't know where the direction or instruction for doing that came from?

A. I do not, sir.

Q. But the way you have described it is the manner in which it was carried out from the time that you became familiar (22) with it in 1943 to the present date?

A. That's correct, sir.

Q. Did the Wilmington Trust Company prepare any tax returns for Dora Browning Donner with respect to the fund held under 2152?

A. Other than the fiduciary return which is required to be filed by all trustees, I am not aware of any personal tax returns prepared by the Wilmington Trust Company.

Q. So far as you know the Wilmington Trust Company did prepare the required fiduciary return?

A. And that's all, sir, as far as I know.

Q. Now with respect to the income from this fund under 2152, you were required to pay that to Dora Browning Donner?

A. That's correct.

Q. And that is the only person to whom you have forwarded the income?

A. Well, strictly speaking, Mr. Marvel, we did not forward any check to Mrs. Donner as such, but she was the only income beneficiary. That's correct.

Q. How did she receive this income? What were the procedures?

A. The procedure was we remitted income quarterly, but we deposited the income on hand to her checking account with us, (23) and duplicate deposit tickets being sent to the Donner Corporation in Philadelphia.

Q. Did the advisor on this fund during this period from 1943 to date instruct the Wilmington Trust Company as to whether certain expenses or other disbursements should be charged against principal or the

income, or partly against the principal or partly against the income of this fund?

A. Yes. Take for example from time to time the Donner Corporation would enter into agreements with brokerage houses to acquire certain large blocks of stock. There might be additional expenses incurred through the acquisition of the stock other than normal brokerage commissions. They would instruct us as trustee to allocate the additional expenses, and we would usually consult with our tax department to see if they felt that was a proper allocation to income or principal, as the case might be. I don't recall myself any time that our tax department disagreed with the manner in which they had asked us to make these allocations.

. . .

(26) Q. Was your relation and acts taken with respect to this fund 2152 limited solely to the investment angle of the (27) fund?

A. Limited solely to the investment angle, if you include proxies, stock dividends. But nothing to do, in other words, with taxes or anything of that kind.

Q. As I understand it the only taxes were the fiduciary returns, and you did not prepare them?

A. Yes, sir. I had nothing to do with that at all.

Q. But that was the only tax matter?

A. That's all that I know of.

Q. Was there any other person in the trust department of the Wilmington Trust Company who had anything to do with the handling of this fund in accordance with the provisions of the agreement?

A. No more so than I.

Q. In other words you are the one who has more complete knowledge during the period we are discussing than anyone else in the trust department of Wilmington Trust Company?

A. I think that is a fair statement, yes.

Q. Can you state whether you on behalf of the trust department of the Wilmington Trust Company undertook any other acts in the management or handling of this fund other than the ones we have discussed?

A. I recall none, Mr. Marvel.

(28) Q. If the trust department had, would you recall it?

A. I would think I would.

* * *

(28) CROSS-EXAMINATION

* * *

(29) By Mr. Walls:

Q. Mr. Bissell, with respect to voting shares of stock of corporations which were held by this trust number 2152, I understand that the registered holder would sign a proxy and that you would forward this proxy to Donner Corporation in Philadelphia?

A. Yes, sir.

Q. And state that if they wished the shares voted, you presumed they would transmit it direct to the corporation?

A. That's correct. We would send them an executed proxy together with the notice of meeting so that they would be able to determine what matters were to be acted on. We would send it to them.

Q. In such cases as required a vote for or against a proposal such as an annual meeting of stockholders, for or against an increase in capital, or some other such proposal, would you undertake to decide which way to vote that?

A. We would not, sir.

Q. And would you send it in blank?

A. Yes, sir.

Q. So that they could complete the proxy by completing (30) the vote for or against any such proposal?

A. That's correct.

Q. Mr. Bissell, in connection with the investment provisions, I see that it is stated that the trustee shall change investment, only upon the written directions of the advisor or on the written consent of the advisor?

A. Yes. It is consent or direction.

Q. Did the trust company ever request an advisor to consent to a change initiated by you?

A. I can recall none, sir, at all.

Q. Then all such changes were made only upon written directions of the advisor?

A. To my knowledge that's right.

Q. Did you have an investment committee that reviewed investments and trusts?

A. We do have one, yes, sir.

Q. Did you have one in 1943?

A. We did, sir. I was not a member of that committee at that time, however, sir.

Q. Did this committee review the investments in various trusts periodically?

A. Yes.

Q. And as to trusts where there were no advisors did the (31) committee review those investments in those trusts?

A. You are speaking of trusts other than Donner trusts?

Q. Yes.

A. You mean trusts in general?

Q. Yes, in general.

A. If the trust agreement provided that the Wilmington Trust Company was to have sole investment responsibility, we most certainly did review the assets periodically in that particular trust or trusts.

Q. And that would cover living trusts?

A. Yes, sir.

Q. And trusts under will?

A. Yes, sir.

Q. And guardianships?

A. Yes, sir.

Q. And I suppose that would include agency accounts where you make suggestions—

A. If the agency agreement provided that we were to give the account investment supervision, we would.

Q. And these suggestions and advice would emanate from your investment committee?

A. Yes, sir.

Q. Did the investment committee review the investments (32) of this trust number 2152?

A. No, sir.

Q. They never did that to the best of your knowledge since you have been here?

A. Not to the best of my knowledge.

Q. In paragraph 12 dealing with compensation for the trustee, it is stated that the trustee shall receive as compensation for its services blank per centum of the gross income, plus one per centum of the principal on distribution. Do you know what percentage was that was charged?

A. No, I don't.

Q. Do you know if there is an agreement in the file as to that rate?

A. On this particular trust?

Mr. Layton: Is this material, Mr. Walls, to this issue?

Mr. Walls: Yes, this is material, I think, because if a smaller number of duties is required for a trust of this nature, then I think it would be re-

lected in a smaller compensation rate to the trustee.

Mr. Layton: The trust agreement, I submit, speaks for itself.

Mr. Marvel: It doesn't seem to be complete, though, (33) Mr. Layton. I would like to join in that request that we fill in the blanks as to the amount of percentage.

Mr. Layton: We can, of course, secure that for you. I don't have that information offhand.

By Mr. Walls:

* * *

(34) Q. Mr. Bissell, did the trustor, Mrs. Donner, ever withdraw any of this principal?

A. She withdrew, that I recall, the sum of \$75,000.

Q. Can you tell us when that was?

A. It is, I believe, attached to Mr. Chinn's affidavit. Was it 1947 or 1948? It is there. It was restored the same year to the trust.

Q. Was it withdrawn by written instrument?

A. It was, sir.

* * *

(37) REDIRECT EXAMINATION

By Mr. Marvel:

Q. Mr. Bissell, Mr. Steel mentioned Mr. Lindsay and Mr. Lack as nominees of a portion of these securities.

A. Yes, sir.

Q. They of course were not named as such nominees until you received the authorization of The Donner Corporation, were they?

A. In this particular trust, no.

(38) Q. I am only referring to this trust, 2152.

A. Yes.

Q. Now with respect to the mention of a power of veto by the advisors in connection with this trust 2152, did the advisor ever veto any action taken by the Wilmington Trust Company during this period of 1943 to the present time?

A. I can recall none.

Q. Did they have any occasion to or opportunity to veto any action taken by the Wilmington Trust Company during that period?

A. I can't think of any, no—any occasion.

Q. Under Article 4 of the agreement there is a provision reciting in substance that when there shall be no advisor, or if, alternatively, the advisor shall fail to give any written direction or to communicate with the Wilmington Trust Company his consent or disapproval within 10 days after the trustee shall have sent to the advisor a request for some consent, then it says the trustee is authorized to act.

A. We have occasion to use that in other trusts from time to time, of course.

Q. Now my question is: Did you ever have occasion to act in accordance with those provisions in this particular trust, 2152?

(39) A. My distinct recollection is that we did not.

* * *

Q. Do you know if during this period from 1943 to the present date whether there was any lack of advice for this particular fund 2152?

A. No, sir. I don't know of any lack.

Q. And the fact is that with respect to the management of this fund 2152, you on behalf of the trust department of Wilmington Trust Company never exercised any independent judgment?

A. I can recall none.

* * *

- (41) Mr. Layton: Mr. Marvel, do you want to take a look at this letter with respect to the fees allowed the trustee? That in itself you will see is rather inconclusive, but I understand it is actually the fees that have been charged.

Mr. Marvel: Well, Mr. Layton, you have handed me this letter which was written at or about the time of the agreement.

* * *

- (42) The Witness: I have just checked with our payment division, and that fee they have been charging all along, 3% of the income.

Mr. Marvel: All right. Then may we have the record show that the Wilmington Trust Company has produced from their records the fact that 3% on the income collected from the fund in trust 2152 has been the fee received by the Wilmington Trust Company since March 25, 1935, and that to complete paragraph 12 of the copy of the trust agreement attached to the complaint in this action as exhibit B, there be inserted in the blank spot the figure 3%?

Mr. Anderson: Wait a minute before you do that. I don't understand that this was ever inserted in the blank spot on the agreement.

The Witness: I can't say that it was.

* * *

- (43) Mr. Marvel: I think maybe to make the record clear, if we could admit a copy of this letter of March 12, 1935, to Mr. William H. Donner from Walter J. Laird—Mr. Layton, I said perhaps to make the record clear it might be helpful if you would offer the letter of Walter Laird of March

12, 1935, which seems to indicate this figure of 3%, and the authority for it.

- (44) Mr. Layton: I would stipulate to this effect: It is hereby stipulated and agreed among counsel for the respective parties that the fees allowed to the Wilmington Trust Company, trustee of the trust number 2152 are as follows:

3% on the income collected, and a distribution fee of 1% of the principal.

I would further stipulate that those fees have been charged and have been paid.

The Witness: With one exception.

Mr. Steel: And an important exception.

Mr. Layton: Except for the \$75,000, which was a temporary withdrawal.

Mr. Marvel: In 1947?

Mr. Layton: Yes.

- (45) Mr. Marvel: The stipulation is acceptable, Mr. Layton.

Mr. Layton: Is that agreeable to everyone?

(There was no response.)

(Photostatic copy of letter dated March 12, 1935, to William H. Donner from Walter J. Laird was deemed marked Exhibit (Bissell) 2.)

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Treasurer

Secretary

Exhibit A to Bissell Deposition A132-1

(47) **EXCERPTS FROM DEPOSITION OF THE
WITNESS BYE TAKEN BY MARVEL DE-
FENDANTS**

(December 28, 1954.)

ROBERT C. BYE, called as a witness by the Marvel defendants, being first duly sworn by the Notary Public, testified as follows:

DIRECT-EXAMINATION

By Mr. Marvel:

Q. Mr. Bye, will you state for the record your name and address?

A. 910 Blackshire Road, Wilmington.

Q. Where are you presently employed, Mr. Bye?

A. J. A. Montgomery, Incorporated.

Q. And that is in Wilmington, Delaware?

A. Yes.

Q. At one time you were employed by the Wilmington Trust Company, were you not?

A. That's right.

Q. Will you state for the record the period during which you were employed by the Wilmington Trust Company?

A. It has been a long time. I believe I came with the bank in either the latter part of 1936 or the first part of 1937. I don't recall whether it was right before Christmas or immediately after Christmas.

(48) Q. How long did you remain with the Wilmington Trust Company?

A. I remained with the Wilmington Trust Company until, I believe it was, around the first of July, 1943, and then after I got out of the Army I came back for probably about four or five months. I don't recall.

Q. And that was after 1945?

A. Yes. As a matter of fact that was 1946.

Q. When you came back to the bank after your discharge from the service in 1946 what were your duties for that short period of time?

A. That is a good question. I did not return to the trust department. I was in the banking department and the auditing end of it.

Q. But during that period you did not have anything to do with the trust department?

A. No, not a thing.

Q. At any time prior to your enlistment in the service did you have anything to do with the trust department?

A. Yes, I did.

Q. What period was that?

A. I think I went with the trust department in probably the early part of 1939, or it might have been 1938. I am not sure, (49) the investment division, and I was there until I left in 1943.

Q. During that period from 1939, you say, until 1943—is that the period?

A. Yes. It might have been shortly before 1939. I don't know.

Q. Well, 1938 or 1939 to 1943?

A. Yes.

Q. Did you have occasion with your duties in the trust department to become familiar with an agreement between the Wilmington Trust Company and Dora Browning Donner which is dated March 25, 1935, and which has been referred to here as agreement number 2152?

A. Yes, I was not—I did not know the terms of the trust, but I had—did some handling of that particular trust.

Q. And that was during what period, what years?

A. I think very probably the latter part of 1939 until I left the bank in July of 1943.

Q. You were familiar with the fact that the terms of that agreement called for an advisor to the fund which was on deposit here?

A. Yes, I was.

Q. And do you know who that advisor was during that time?

A. There were three people. Mr. Hairsine, when I first (50) started, but he left, apparently left the Donner's shortly after that. And Mr. Baxter.

Q. Do you know Mr. Baxter's initials?

Mr. Steel: Just a minute. He has not finished answering, Mr. Marvel.

Mr. Marvel: All right.

The Witness: Mr. Stewart. I think it was either C. K. or C. J. Baxter.

By Mr. Marvel:

Q. And Mr. Stewart?

A. John Stewart, I believe.

Q. Were there any other advisors during this period which I understand to cover the period from 1939 to 1943 other than those you have mentioned?

A. I believe that Mr. Baxter had a brother who was also an advisor.

Q. It has been some time since you have had occasion to refresh your recollection as to these things? Is that not true?

A. That's right.

Q. I will state for your information that it has been testified here, and it is admitted in the various affidavits, that in 1940 the advisors were changed from these individuals to The Donner Estates, Inc., which later became The Donner Corporation.

(51) Were you familiar with that?

A. I recall, but as I recall Mr. Baxter or Mr. Stewart were signing as officers of that.

Q. As officers of Donner Estates?

A. Yes.

Q. In other words these people first served as advisors in an individual capacity and later as officers of Donner Estates?

A. I think that is correct.

• • •

(52) Q. Now, Mr. Bye, I am going to ask you about the procedure which was followed by you as an employee of the trust department of the Wilmington Trust Company with respect to the purchases, exchanges and sales of securities which constituted this fund under the agreement 2152.

A. Well, when I took over the account or started to work on it, I was told that certain individuals were authorized to direct purchases and sales. I would receive a letter from Mr. Baxter stating that they had purchased or sold certain securities. I would then hold that letter, as I recall it, until confirmations came in from various brokerage houses. I (53) would then check the confirmation against the letter and turn the confirmation over to the securities cage, and they handled it from there on.

Q. Did you ever receive any instructions from anyone in the Wilmington Trust Company as to the securities to be purchased, sold or exchanged?

A. No, sir, I never did.

Q. Those instructions came solely from the advisor of the trust?

A. They were either signed by Hairsine, Baxter or Stewart, as I remember, and they weren't even—I never answered them, as a matter of fact, just held them until the confirmation came in.

Q. But you took no action with respect to this fund until you had received such instructions?

A. Oh, no, sir.

Q. Before you, marked exhibit (Bissell) 1, is a form on the letterhead of the Donner Corporation. I ask you whether that is similar to the form that you received from The Donner Corporation when you were handling this account.

A. No, it was not. I received letters. There was no form.

Q. So that during this period of 1939 to 1943 instructions (54) came to your desk over the signature of an advisor in the form of a letter, rather than in a printed form such as Bissell exhibit 1?

A. That's right, yes.

Q. Was the letter form also used to instruct the Wilmington Trust Company as to the manner that proxies for shares of securities in this fund 2152 should be handled?

A. We were never instructed. We would receive the proxies here and I would have them, as I recall—Lack and Lindsay was our nominee and the securities were in their names, and I would execute the proxies and together with a letter forward them to their office in Philadelphia, to Mr. Baxter.

Q. What would Lack and Lindsay have to do with that?

A. Well, securities were in the name of Lack and Lindsay as I recall it.

Q. In other words you sent a proxy signed by Lack and Lindsay in blank to the advisor in Philadelphia?

A. Well, in blank as far as whether they were going to vote it or not. I never received any notification of whether the proxies were voted or whether they were not voted.

Q. That's right, but the Wilmington Trust Company never voted those shares?

A. No, sir.

(55) Q. Did Wilmington Trust Company during this period of 1939 to 1943 exercise its independent judgment either as to a sale or purchase or exchange of property or as to the manner in which it was to be done, or as to the broker or agent through whom such sales or purchases or exchanges were effected?

A. Not to my knowledge.

Q. In other words in every case of a sale, purchase or exchange of the securities in this fund 2152, it was only done upon the instructions of the advisor?

A. Yes, sir.

Q. During this period, Mr. Bye, with which you are familiar, was any action taken by the Wilmington Trust Company as to the management of this fund 2152 without the instructions of the advisor?

A. Not to my knowledge.

* * *

(56) By Mr. Walls:

Q. Mr. Bye, did you ever seek the consent of the advisors to make any changes?

A. No, sir.

* * *

(57) **EXCERPTS FROM DEPOSITION OF THE
WITNESS FAIRMAN TAKEN BY MARVEL
DEFENDANTS.**

(December 28, 1954.)

ENDSLEY P. FAIRMAN, called as a witness by the Marvel defendants, being first duly sworn by the Notary Public, testified as follows:

DIRECT-EXAMINATION

By Mr. Marvel:

Q. Will you state for the record your name, sir?

A. Endsley P. Fairman.

Q. And your address?

A. 2309 Ridgeway Road, Wilmington.

Q. By whom are you presently employed, Mr. Fairman?

A. Wilmington Trust Company.

Q. How long have you been in the employment?

A. Since 1936, with the exception of the war years.

Q. When did you enlist?

A. In 1942, May.

Q. So that prior to the war your period of employment ended in May, 1942?

A. That's correct.

Q. And I take it that you came back after 1945 or 1946?

A. That's correct.

Q. When did you first come with the Wilmington Trust Company? What was that date?

(58) A. I believe it was approximately the first of June, 1936.

Q. In what department were you employed in 1936?

A. The investment division.

Q. Of the trust department?

A. Of the trust department.

Q. You were in that division from 1936 to 1942?

A. That's correct.

Q. In connection with your duties in that department did you become familiar with the handling of the funds in the trust established by Dora Browning Donner with the Wilmington Trust Company which has heretofore been referred to as trust 2152?

A. I did.

Q. Are you the person who during that period handled the details of that fund?

A. I handled the administration of it.

Q. You handled the administration of that fund?

A. Yes, sir.

Q. You have been here during the testimony of Mr. Bissell and Mr. Bye?

A. I have.

Q. You have heard the manner in which they have described that investments, purchases, sales and exchanges of securities (59) were made?

A. I have.

Q. Did you as the administrator of this fund on behalf of the Wilmington Trust Company during this period 1936 to 1942 undertake any act without instructions of the advisor of this fund?

A. First there would be one correction, Mr. Marvel. I only handled it from 1936 to approximately 1940, or the end of 1939.

Q. Oh, that is when Mr. Bye came in?

(60) A. That's correct.

Q. Oh, then we can shorten this up considerably. In fact, therefore, you only handled this from 1936 to 1939 when Mr. Bye took over?

A. That's right.

Q. Fine. All right. Now we will go back to the question I just asked you, whether on behalf of the Wilmington Trust Company you undertook to complete any administrative detail without the instructions of the advisor of this fund 2152.

A. Well, if I understand your question, we completed no investment detail without the advisor's instructions, but we accepted instructions from the trustor as to who the advisors were. I don't know whether that would be an administrative detail.

* * *

(61) Q. You accepted instructions from Mrs. Donner as to the persons she had designated as advisors of the fund?

A. That's correct.

Q. And you say that is an example of an administrative detail which the advisor did not instruct on?

A. Yes, sir.

Q. I agree with you. Before you is a form which has been marked Bissell Exhibit 1. Was that form used to communicate instructions from the advisor of the fund to the Wilmington Trust Company during this period from 1936 to 1939?

A. It was not.

Q. What was the method of communication of instructions from the advisors to the Wilmington Trust Company at that time?

A. The method was similar to the procedure described by Mr. Bye, which involved our receiving almost simultaneously the confirmations from brokers showing the purchases or sales of securities and also receipt of letters from the advisor of the trust stating that that particular confirmation applied to this particular trust and that he hereby gave us official authorization to act upon it. Now, a good deal of that was co-ordinated also by telephone.

(62) Q. Co-ordinated, but in fact you did not act until you had received the written authorization?

A. That's correct.

Q. But in order to expedite the matter you did communicate by telephone?

A. That's right.

Q. You have heard Mr. Bissell and Mr. Bye testify with respect to the manner in which proxies were handled. Was that procedure followed during the period you handled it, namely 1936 to 1939?

A. It was. The proxies were executed in the name in which the securities were registered, which I believe at that time would have been either Wilmington Trust Company, or Wilmington Trust Company, Trustee, and they were then sent in blank to the advisor with the suggestion that they vote it as they saw fit.

Q. But during this period of 1936 to 1939 Wilmington Trust Company or Wilmington Trust Company, Trustee, or a nominee of Wilmington Trust Company in whose name the shares were registered, did not vote any proxies?

A. They did not. I omitted "nominee" because at that time we did not use nominees.

Q. And that came later for the reasons stated by (63) Mr. Bissell?

A. Yes, sir.

Q. Was this a very active account during this period that you were in charge of it?

A. That is hard for me to answer at this stage, but I would say that it was active.

* * *

(65) Q. I will ask you this question, Mr. Fairman: Was any action taken by you during this period of 1936 to 1939 in (66) connection with the fund number 2152 as to the purchase or sale or exchange of securities?

A. Was it initiated by me?

Q. Was any action ever taken with respect to the sales, purchases or exchange of securities in this fund 2152 without the suggestion of the advisor?

A. It was not taken without the suggestion of the advisor at any time.

Q. And that is also true--

A. If I can be helpful on the point of activity, this is not pinpointing it, but if you mean by "activity", were there transactions in each of the years in which I handled the account, my answer would be yes. I wouldn't remember how many there were.

Q. But you remember in each action that you took with respect to the fund, there was no occasion where an action was taken without the instruction of the advisor?

Mr. Steel: By "action" you mean the investment, or the purchase, sale or exchange?

Mr. Marvel: The purchase, sale or exchange of securities. I am limiting it to that only, Mr. Steel.

The Witness. That is correct.

(67) By Mr. Marvel:

Q. And that is true as you have testified also, with respect to the action taken as to proxies?

A. That also is correct.

* * *

(68) Q. Mr. Bissell testified that that manner of handling the proxies was as a result of a policy. Do you know who created that policy that the proxies should be sent to the advisor in blank for whatever use they decided to make of them?

A. If it was ever put in the form of a policy, I would say it was decided by the head of the invest.

ment division in consultation with the head of the trust department.

Q. Do you know that that policy applied to all other trusts held in the trust department?

A. I do not know that.

Q. Did the head of the trust department establish that policy with respect to this trust 2152 alone?

A. I think not. If I understand Mr. Bissell correctly, I think he was simply talking to you about a policy for handling proxies in the various Donner accounts, a routine basis.

Q. Yes. All I want to know now is, do you know who established that policy?

A. I don't know specifically.

Q. Do you know whether it was the advisor of the fund or an officer in the trust department?

A. I believe it was a suggestion made by an officer in the trust department and approved by the advisor of the fund.

(69) Q. So the advisor consented, they gave their approval to that suggestion?

A. I believe so.

Q. And that was done during this period of 1936 to 1939?

A. I can't tell you when it was reduced to an actual policy, but we handled it in the same manner before any definite policy was set.

Q. But your recollection is that the suggestion was made by the Wilmington Trust Company and the consent and approval of the advisor was obtained?

A. That's right.

Q. Do you know whether it was ever done prior to obtaining the consent or approval of the advisor of the fund?

A. Have we ever voted a proxy without their consent?

Q. Well, I will ask you that, yes, first.

A. I would say the answer to that would be no, because it would be a very unorthodox thing for us to do.

Q. Did you ever vote any of these shares during this period that you are testifying about?

A. Without first sending the proxy to the advisor, no.

Q. You always followed out the procedure of sending the proxy to the advisor during this period?

A. Yes.

(70) Q. Now my question is, did you ever send these proxies in blank to the advisor prior to obtaining the consent or authority of the advisor to do so?

A. I can't exactly answer that question, because I think when we—I am sure when we decided to send them the proxies executed in blank, we had some discussion with them verbally about it before we did it. I don't remember that when it occurred, but I am sure that we didn't just do it without their concurrence in the method.

Q. So it is your recollection that this method of handling the proxies was decided on by a suggestion from the Wilmington Trust Company which was approved by the advisor of the fund?

A. That's right.

Q. And that this manner of handling them was not carried out until after the suggestion and approval of the advisor had been obtained?

A. That would be right.

Mr. Steel: Not the suggestion of the advisor, but the—

Mr. Marvel: Suggestion of the Wilmington Trust Company and the consent and authorization of the advisor had been obtained.

(71) By Mr. Marvel:

Q. During this time, 1936 to 1939, when you were in charge of this particular fund 2152, did you have anything to do with tax matters?

A. I did not personally.

Q. Do you know whether the Wilmington Trust Company did?

A. I believe that as Mr. Bissell stated the only connection we had with tax matters was to file a fiduciary return. I am not sure whether we gave tax information letters at that time to the recipient of the income, but that would be the only connection we would have with any tax matters.

Q. I mean no preparation of the beneficiary's income tax return.

A. No.

Q. Either State or Federal?

A. That's right.

(72) CROSS-EXAMINATION

(73) By Mr. Walls:

(74) Q. In connection with your changes in investments, I believe you said that there were times when you communicated with the advisor by telephone?

A. That's right, and I suppose that would be advance notice that written instructions were on the way. We might get a confirmation and not know what account it applied to—the mail might be held up on the written instructions. Or vice versa, if they had told us they were buying something and (75) a confirmation didn't come through, we would call them and ask them about it to be sure that they had actually placed the order, and that kind of thing.

Q. They would select the broker through whom the sale or purchase would be executed?

A. That's right.

Q. Did you make any changes by consent of them; a change initiated by the trust company?

A. To the best of my knowledge and belief we did not.

• • •

REDIRECT-EXAMINATION

By Mr. Marvel:

Q. Mr. Fairman, you said from time to time—or you didn't say it in this way, but this is the impression I got—from time to time the Wilmington Trust Company made certain suggestions to the advisor with respect to—one instance was, I think, the manner in which the proxies should be handled. Were there any suggestions during that period from 1936 to 1939 that you know of which were made by the Wilmington Trust Company which related to anything more than the procedural mechanics of expediting the administration of this trust?

(76) A. I would say the answer to that would be no.

• • •

(77) **EXCERPTS FROM DEPOSITION OF THE
WITNESS BRADFORD TAKEN BY THE
MARVEL DEFENDANTS.**

(December 28, 1954.)

WILLIAM BRADFORD, JR., called as a witness by the Marvel defendants, being first duly sworn by the Notary Public, testified as follows:

DIRECT-EXAMINATION

By Mr. Marvel:

Q. Mr. Bradford, will you state your name and address for the record?

A. William Bradford, Jr., 239 Philadelphia Pike, Wilmington.

Q. And your present employer?

A. Wilmington Trust Company.

Q. When did you first become employed by the Wilmington Trust Company?

A. In June, 1932.

Q. You have been here since 1932?

A. With the exception of military leave.

Q. And that was when?

A. 1943. The end of 1943 to the first part of 1946.

Q. In March, 1935, what was your position in the Wilmington Trust Company?

A. I was then the clerk in the securities cage.

* * *

(78) Q. In that capacity did you become familiar with the administration of a fund established by Dora Browning Donner in the Wilmington Trust Company under an agreement dated March 25, 1935, which has heretofore been referred to as 2152?

A. Yes, sir.

Q. When did you become familiar with that administration?

A. Well, I was in the securities work at the time the trust was created.

Q. So that from its very inception, March 25, 1935, you handled that account?

A. I handled the purchases and sales and exchanges in that account, yes, sir.

Q. Could you describe briefly the manner in which you handled the purchases and sales in that fund?

A. Letters from the advisor of the trust were delivered to me stating that certain securities had been bought or sold, the price, the broker, and I followed the instructions of making payment or delivering the securities against payment.

Q. And that was done by written instructions by the (79) advisor of the fund?

A. Yes, sir.

Q. Do you know who was the advisor of the fund at that time?

A. Mr. Donner.

Q. William H. Donner?

A. William H. Donner, yes, sir.

Q. And you handled those mechanical details from March 25, 1935, until what period.

A. About the middle of June in 1936.

Q. Was that when Mr. Fairman took over?

A. Yes.

Q. You instructed him as to how to handle it?

A. Well, sir, my duties were perhaps more restricted than Mr. Fairman's in that I handled only the securities work, so to that extent I showed Mr. Fairman the type of letter that we received and what we did concerning, as he mentioned—wait for the confir-

mation and check the confirmation and the letter of instructions, and so on. And then he turned over the work to me and I continued to execute the orders that he had authenticated.

Q. During this period of March, 1935, until you say June, 1936—

(80) A. June, 1936, yes, sir.

Q. Whenever it was that Mr. Fairman took over, did you on behalf of the Wilmington Trust Company ever exercise any independent judgment either as to a sale, purchase or exchange of property in this fund, or the manner, or the broker or agent through whom such sales or purchases or exchanges were effected?

A. No, sir.

Q. During this period of 1935 and 1936 did you handle the matter of the voting of the proxies?

A. No, sir.

Q. Do you know who did that?

A. No, sir.

Q. Do you know whether there were any common stocks in the fund at that time?

A. To the best of my knowledge there were.

Q. There were?

A. There were.

Q. So someone must have handled the proxies which those shares were entitled to vote?

A. Yes.

Q. You don't know who did that?

A. No, sir. That was not a part of my duties, any part of the proxy work.

(81) Q. Well, then, your duties were limited solely to carrying out the mechanical details to effect the instructions received from the advisor of the fund?

A. Yes, sir, and during that particular period that you are referring to, to authenticate authorizations we received.

Q. And you never acted without an authorization?

A. No, sir.

Q. You never acted until the authorization had been authenticated?

A. That's right. That is, the signature authenticated.

Q. That is right, and the signature was that of William H. Donner?

A. Yes, sir.

Q. You knew that, you knew his signature?

A. Yes, sir.

Q. Is it a fact that the only administrative detail you carried out with respect to this fund during this period of 1935 and 1936 was with respect to the investment?

A. To effecting changes in investments.

Q. To effecting changes in investments as directed by the advisor?

A. That's correct.

Q. You had nothing to do with the proxies?

(82) A. No, sir.

Q. You had nothing to do with the disbursement of the income?

A. No, sir.

Q. And you had nothing to do with any tax returns?

A. No, sir.

Q. Do you know who had anything to do with those matters other than the ones you had knowledge of?

A. Well, we had a tax division of the trust department that did what tax work was necessary or that we were obliged to do in connection with—

Q. Who was in charge of that at the time? Do you recall?

A. No, sir. Not specifically.

Q. Do you know who handled the proxies at that time, 1935 and 1936?

A. To the best of my knowledge the proxies were handled in what we call the investment division of the trust department.

Q. And who was the person in charge of that at the time?

A. At that time Mr. Bancroft was in charge.

Q. Mr. J. Sellers Bancroft?

A. Mr. J. Sellers Bancroft.

Q. But you don't recall who did the tax work?

A. We had some changes about that time, sir, and I can't (83) locate it in time as to just what happened when.

Q. You mean you just don't know now?

A. Yes, sir.

**(84) EXCERPTS FROM DEPOSITION OF THE
WITNESS BANCROFT TAKEN BY THE MAR-
VEL DEFENDANTS.**

(December 28, 1954.)

* * *

J. SELLERS BANCROFT, called as a witness by the Marvel defendants, being first duly sworn by the Notary Public, testified as follows:

DIRECT-EXAMINATION

By Mr. Marvel:

Q. Mr. Bancroft, will you state for the record your name and address?

A. J. Sellers Bancroft, 2409 Willard Street, Wilmington, Delaware.

Q. And the name of your present employer?

A. Wilmington Trust Company.

Q. How long have you been employed by the Wilmington Trust Company?

(85) A. Since September 15, 1927.

Q. In 1935 what was your position in the Wilmington Trust Company?

A. I think I was head of the investment division.

Q. Of the trust department?

A. Of the trust department.

Q. As such head of the investment division did you have occasion to become familiar with an agreement between Dora Browning Donner and the Wilmington Trust Company dated March 25, 1935?

A. Well, I had some knowledge, I would say, of all of the agreements from which trusts were set up and were operated by the Wilmington Trust Company as trustee.

Q. By "all agreements" you are not limiting yourself to the Donner family?

A. No.

Q. Then you did have some knowledge of this particular trust, which was number 2152?

A. I would presume that I had some knowledge.

Q. Would it be helpful to you to have before you a copy of this trust to refresh your knowledge of it?

A. Well, as to my present knowledge, or what I remember, not what I knew in nineteen—whatever the date was—

(86) Q. Well, we won't get very legal at this point, Mr. Bancroft. I want to know what you knew in 1935.

A. I wouldn't know.

Q. Do you have any recollection as to the manner in which proxies of shares which were in the fund set up under the agreement of March 25, 1935, were voted?

A. My recollection on that is that what proxies were voted, were voted on instructions from the Donners. I don't think that we would at that time or any other time have voted the proxies without such instructions.

Q. And whether the instructions were for you to forward the proxies in blank to The Donner Company or whether they were to be voted directly at the meeting, you don't recall?

A. I do not recall that.

Q. But you are clear that nothing was done with respect to the voting of the proxies without an instruction from the advisor of the fund?

A. I am quite sure that that was the case.

Q. Do you know whether in 1935 and 1936 the Wilmington Trust Company undertook the duty of making any tax returns other than the required fiduciary return on this trust 2152?

A. I wouldn't know.

Q. In your position at that time you had nothing to do (87) with the matter of taxes and tax returns?

A. No, a bare minimum.

Q. You are familiar with the manner in which the sales, purchases and exchanges of securities in this fund 2152 were handled at that time, 1935 and 1936?

A. Well, I am familiar to this extent, that the Donner trusts were handled on directions from either the Donners or their advisors. We did not do anything, as I recall, without being directed to do so.

* * *

CROSS-EXAMINATION

* * *

(88) Mr. Anderson: No questions.

By Mr. Walls:

Q. Mr. Bancroft, the agreement I believe mentions that investment changes will be made on the direction of the advisors or with the consent of the advisors, and as I understand your testimony no changes were made except on the direction of the advisors?

A. All I know on that is that those Donner trusts—I am not differentiating this one from the others—have pretty unanimously been run on a direction basis. I won't say 100%, but I will say for the most part all have.

Q. And over what period is this?

(89) A. Since we have had the trusts.

Q. You didn't undertake to initiate investment changes?

A. My guess on that would be, and this is simply a guess, that early in the game we found that they were not interested in our ideas, that they had their

own. For example, I know that when Mr. Donner was down here one time he mentioned that this was a problem to him because always in the past he had invested in companies which he controlled. But he didn't seem to want much help from us, so that permeated all the trusts, and whether or not we started making suggestions, I don't know. But we soon found out that they wanted to direct us, and so we went along with them that way.

Q. So that the changes that were made, were made on the directions of the advisor?

A. Certainly by far the largest part. I think there have been relatively few consent changes.

By Mr. Marvel:

Q. Well, Mr. Bancroft, you don't know of any consent changes with respect to this particular fund 2152?

A. I don't know whether there were or whether there weren't. I would doubt if there were many. There might have been none. I don't know.

(90) Q. But you were very careful not to do anything without the written instruction of the authorized person?

A. That's correct.

* * *

AFFIDAVIT OF C. KENNETH BAXTER.

(Dated December 27, 1954.)

* * *

1. That since January 1, 1950, and at the present time, he is President of The Donner Corporation. That prior thereto, and since 1931, he has been an investment adviser to William H. Donner, husband of Dora Browning Donner, and members of his family and companies owned or controlled by them. He has been an officer since 1940 of Donner Estates, Inc., (since 1947, Donner Corporation).

2. As such investment adviser, he is familiar with the management and the conduct of the financial and business affairs of the family of William H. Donner. He is familiar with the agreement made between Dora Browning Donner and the Wilmington Trust Company, Wilmington, Delaware, on March 25, 1935. Under said agreement, Wilmington Trust Company, as Trustee, is specifically authorized and empowered, among other things:

(1) To sell at public or private sale, exchange for like or unlike property, convey, lease for terms longer or shorter than the trust, and otherwise dispose of any or all property, real or personal, held in the trust fund, for such price and upon such terms and credits as Trustee may deem proper.

(2) To invest the proceeds of any such sale or sales, and any other money available for investment, in such stocks, bonds, notes, securities and/or other income-producing property as may be deemed appropriate for this trust fund, irrespective of the rules of investment applying to trustees under any present or future laws of the State of Delaware or elsewhere.

(3) To participate in any plan or proceeding for protecting or enforcing any right, obligation or interest arising from any stock, bond, note or security held in the trust fund, or for reorganizing, consolidating, merging or adjusting the finances of any corporation issuing the same, to accept in lieu thereof any new or substituted stocks, bonds, notes and/or securities, to pay any assessment or any expense incident thereto, and to do any other act or thing that Trustee may deem necessary or advisable in connection therewith.

Article 4 of the agreement, however, provides that the Trustee shall exercise the above recited powers only upon written direction of, or with the written consent of, the adviser of the trust; provided, however, that if at any time during the continuance of the trust, there shall be no adviser, or if the adviser shall fail to give any written direction or to communicate in writing to Trustee his consent or disapproval as to the exercise of any of the aforementioned powers within ten (10) days after Trustee shall have sent to the adviser, by registered mail, a written request for such consent, Trustee is authorized and empowered to take such action as it, in its sole discretion, shall deem to be for the best interest of the beneficiary of the Trust. W. H. Donner was the adviser originally named in said agreement. By letter dated June 29, 1936, Dora Browning Donner nominated and appointed affiant, C. Kenneth Baxter, and J. E. Hairsine, or either of them, to act as adviser in lieu of W. H. Donner, the adviser originally named in the agreement, and by letter dated October 14, 1937, Dora Browning Donner nominated and appointed Affiant, C. Kenneth Baxter, J. E. Hairsine and John Stewart, or any one of them, as such advisers. By letter dated December 13, 1940, Dora Browning Donner amended paragraph 5 of the

agreement which originally provided that the adviser of the so-called trust should be W. H. Donner or such other "person or persons" as Dora Browning Donner should nominate in writing delivered to Wilmington Trust Company, so as to provide that the adviser should be Donner Estates, Inc., a Pennsylvania corporation, or such other "corporation, person or persons" as Dora Browning Donner might nominate in writing delivered to Wilmington Trust Company, and to specify the compensation to be paid to "Donner Estates, Inc.," for acting as adviser. By letter dated February 5, 1946, Dora Browning Donner further amended paragraph 5 by changing the compensation to be paid to "Donner Estates, Inc., or any other adviser or advisers hereinafter nominated." Since June 29, 1936, he, C. Kenneth Baxter, in his capacity as an individual adviser or as an officer of Donner Estates, Inc. (since 1947, Donner Corporation), has acted as an adviser of the fund deposited with the Wilmington Trust Company under the agreement of March 25, 1935.

3. With respect to the manner of the management of the fund held by the Wilmington Trust Company pursuant to the agreement with Dora Browning Donner dated March 25, 1935, Wilmington Trust Company, to the best of his knowledge, since June 29, 1936, has neither bought nor sold any securities for the said fund, except upon directions of the adviser of the fund. Whenever the adviser determined to sell or exchange property held in the fund, or to reinvest proceeds of any such sale or to invest the assets of the fund in other securities, the adviser would place orders for such sale, exchange, or purchase, and then advise and direct Wilmington Trust Company that such order had been placed, the name of the broker or agent with whom such order had been placed, and the

manner in which the Wilmington Trust Company should effect delivery of the property involved or should forward the purchase price for such transaction. Attached hereto and marked Exhibit A is a set of forms which have been most recently used by the adviser to give Wilmington Trust Company directions with respect to each sale, exchange or purchase of securities for and on behalf of said fund.

4. In connection with the management and investment of said fund, numerous sales, purchases, and exchanges of property were executed as hereinabove outlined, and in no case, to the best of his knowledge, did the Wilmington Trust Company ever exercise its independent judgment either as to a sale, purchase, or exchange of property made or as to the manner or the broker or agent through whom such sales, purchases and exchanges were effected. Wilmington Trust Company, in all such instances, merely carried out the mechanical details and procedures as instructed by the adviser, in order to accomplish the sales, purchases, and exchanges determined upon by the adviser and with respect to which Wilmington Trust Company was given directions by the adviser.

5. The adviser of said fund had full responsibility for any decrease or increase in the value of said fund, attributable to the investments of the fund, and Wilmington Trust Company accepted no responsibility for any such decrease or increase in the value thereof.

6. The adviser either instructed the Wilmington Trust Company whether and how to vote, and whether directly or by proxy, at any and all elections or stockholders' meetings of companies whose shares of stock were held in said fund, and the manner, the persons and the proposals for or against such votes were to be

cast, or instructed the Wilmington Trust Company to deliver its proxy to the adviser for the shares of stock held in said fund in order for the adviser to vote such shares at any and all elections or stockholders' meetings of companies whose shares of stock were held in said fund. In no case, to the best of his knowledge, did Wilmington Trust Company exercise its independent judgment as to the manner, the persons or the proposals for or against which votes of shares of stock held in said fund were cast.

7. The adviser of said fund has, upon occasion, instructed the Wilmington Trust Company as to whether expenses and other disbursements should be charged against principal or income, or partly against principal and partly against income.

8. The adviser of said fund instructed the Wilmington Trust Company as to the manner to take and to hold any security or other property constituting a part of the fund, whether in bearer form or in the name of the Wilmington Trust Company or in the name of a nominee of Wilmington Trust Company. In no case, to the best of his knowledge, did Wilmington Trust Company exercise its independent judgment as to such determination but in all cases merely carried out the instructions of the adviser.

9. Dora Browning Donner, in order to accomplish the administration of said fund, appointed all advisers to said fund without whose instructions, to the best of his knowledge, Wilmington Trust Company in no case acted with respect to making investments or selling securities.

10. The Donner Corporation, by agreement with various beneficiaries, including Dora Browning Donner, is obligated to prepare personal tax returns, both

Federal and State, and in all cases where such services are requested, does prepare and, after signature by the beneficiaries, does file and, where necessary, defend such returns. This does not include fiduciary returns which, in all cases, are prepared by the tax departments of the various banks serving as Trustee. In January, 1944, Dora Browning Donner became a citizen and resident of Florida, and it became necessary to file for and on her behalf tax returns required by that state. From 1944 until the time of her death in 1952, Dora Browning Donner paid the intangible tax assessed in Palm Beach County, Florida, upon all of the intangibles constituting, from time to time, the assets held in custody by Wilmington Trust Company under the agreement of March 25, 1935. Wilmington Trust Company prepared no tax returns for Dora Browning Donner required to be filed in the State of Florida.

C. Kenneth Baxter

AFFIDAVIT OF JOHN STEWART.

(Dated December 14, 1954.)

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1. That he is a resident of Rosemont, Pennsylvania. From November 1, 1940, until December 31, 1949, he was familiar with and active in the management and the conduct of the financial and business affairs of the family of William H. Donner, including the manner in which investments were made and handled. Particularly, he is familiar with the agreement made between Dora Browning Donner and the Wilmington Trust Company, Wilmington, Delaware, on March 25, 1935. He acted, together with others, as financial adviser to Dora Browning Donner pursuant to the terms of said agreement between Dora Browning Donner and Wilmington Trust Company dated March 25, 1935. He was president of Donner Estates, Inc., (since 1947, Donner Corporation) from 1940 until December 31, 1949. He married Dorothy B. Rodgers, the daughter of Dora Browning Donner.

2. In his capacity as one of the financial advisers of Dora Browning Donner, he has knowledge of the manner in which investments were made on her behalf and the manner in which the custody of her securities was performed. Under the terms of the agreement between Dora Browning Donner and Wilmington Trust Company dated March 25, 1935, and, in fact, Wilmington Trust Company acted solely as the custodian of securities deposited with it for and on behalf of the account of Dora Browning Donner, and in no way exercised independent judgment as to the management or supervision of said securities. After depositing the securities with Wilmington Trust Company at the time Dora Browning Donner entered into said agreement

with Wilmington Trust Company dated March 25, 1935, which securities are listed on Schedule A to said agreement, it became necessary to establish procedures as to the management and investment of the fund so created. The procedures thereupon established provided, in accordance with the terms of said agreement, that Wilmington Trust Company would perform no acts with respect to said fund or securities except upon the written directions of the adviser of the fund. Whenever the adviser determined to sell or exchange property held in the fund, the adviser would make such sale or exchange and then advise and direct Wilmington Trust Company that such sale or exchange had been made, the name of the broker or agent through whom such sale or exchange had been executed, and the manner in which the Wilmington Trust Company should effect delivery of the property so sold or exchanged. Whenever the adviser determined to reinvest the proceeds of any such sale or to invest the assets of the fund in other securities, the adviser would make a purchase and then advise and direct Wilmington Trust Company that such purchase had been made, the name of the broker or agent through whom such purchase had been executed, and the manner in which Wilmington Trust Company should forward the purchase price of such transaction.

3. In connection with the management and investment of said fund, numerous sales, purchases, and exchanges of property were executed as hereinabove outlined and in no case did the Wilmington Trust Company ever exercise its independent judgment either as to a sale, purchase, or exchange of property made or as to the manner or the broker or agent through whom such sales, purchases, and exchanges were effected. Wilmington Trust Company in all in-

stances merely carried out the mechanical details and procedures as instructed by the adviser, in order to accomplish the sales, purchases, and exchanges determined upon by the adviser and with respect to which Wilmington Trust Company was given directions by the adviser.

4. The adviser of said fund had full responsibility for any decrease or increase in the value of said fund, and Wilmington Trust Company accepted no responsibility for any such decrease or increase in the value thereof.

5. The adviser instructed the Wilmington Trust Company whether and how to vote, and whether directly or by proxy, at any and all elections or stockholders' meetings of companies whose shares of stock were held in said fund, and the manner, the persons and the proposals for or against such votes were to be cast, or instructed the Wilmington Trust Company to deliver its proxy to the adviser for the shares of stock held in said fund in order for the adviser to vote such shares at any and all elections or stockholders' meetings of companies whose shares of stock were held in said fund. In no case did Wilmington Trust Company exercise its independent judgment as to the manner, the persons or the proposals for or against which votes of shares of stock held in said fund were cast.

6. The adviser of said fund instructed the Wilmington Trust Company as to whether expenses and other disbursements should be charged against principal or income, or partly against principal and partly against income. In no case did Wilmington Trust Company exercise its independent judgment as to such determination but in all cases merely carried out the instructions of the adviser.

7. The adviser of said fund instructed the Wilmington Trust Company as to the manner to take and to hold any security or other property constituting a part of the fund, whether in bearer form or in the name of the Wilmington Trust Company or in the name of a nominee or nominees of Wilmington Trust Company. In no case did Wilmington Trust Company exercise its independent judgment as to such determination, but in all cases merely carried out the instructions of the adviser.

8. Dora Browning Donner, in order to accomplish the administration of said fund, appointed all advisers to said fund without whose instructions Wilmington Trust Company in no case acted.

9. Affiant denies that at the time of the alleged exercise of an alleged power of appointment by Dora Browning Donner on or about December 3, 1949, that the issue of Katharine N. R. Denckla and Dorothy B. R. Stewart and affiant had substantial incomes from various trusts.

10. At the time of the alleged exercise of an alleged power of appointment dated December 3, 1949, under the agreement of March 25, 1935, and at all times thereafter, Elizabeth Donner Hanson had control over, and an interest in, property substantially greater in value than that of Katharine N. R. Denckla or Dorothy B. R. Stewart.

/s/ John Stewart

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AFFIDAVIT OF JOHN E. HAIRSINE.

(Dated January 6, 1955.)

1. That he is presently employed by The General Coal Company with offices at Fidelity Philadelphia Bldg., 123 South Broad Street, Philadelphia, Pennsylvania.

2. He was employed by William H. Donner on January 1, 1934, for and on behalf of various companies owned or controlled by the family of William H. Donner. He was employed as an adviser on tax, accounting and investment matters. In such capacity he became familiar with the management and conduct of the financial and business affairs of the family of William H. Donner and in particular those of his wife, Dora Browning Donner. Donner Estates, Inc., was incorporated on September 11, 1940, and he served as Vice President thereof from said date until October 31, 1940.

3. He was familiar with an agreement made between Dora Browning Donner and the Wilmington Trust Company dated March 25, 1935. He was the sole witness of its execution by Dora Browning Donner.

4. From March 25, 1935, until October 31, 1940, he was familiar with and active in the management of the fund held by Wilmington Trust Company for Dora Browning Donner under the agreement of March 25, 1935. During this period Wilmington Trust Company neither bought, sold nor exchanged any securities for the said fund except upon direction of the advisor of the fund, who had full and complete control of the management of the fund.

5. With respect to the manner of the management of the fund held by the Wilmington Trust Company pursuant to the agreement with Dora Browning Donner dated March 25, 1935, Wilmington Trust Company, to the best of his knowledge, since March 25, 1935, has neither bought nor sold any securities for the said fund, except upon directions of the adviser of the fund. Whenever the advisor determined to sell or exchange property held in the fund, or to reinvest proceeds of any such sale or to invest the assets of the fund in other securities, the adviser would place orders for such sale, exchange, or purchase, and then advise and direct Wilmington Trust Company that such order had been placed, the name of the broker or agent with whom such order had been placed, and the manner in which the Wilmington Trust Company should forward the purchase price for such transaction.

6. In connection with the management and investment of said fund, numerous sales, purchases, and exchanges of property were executed as hereinabove outlined, and in no case, to the best of his knowledge, did the Wilmington Trust Company ever exercise its independent judgment either as to a sale, purchase, or exchange of property made or as to the manner or the broker or agent through whom such sales, purchases, and exchanges were effected. Wilmington Trust Company, in all such instances, merely carried out the mechanical details and procedures as instructed by the adviser, in order to accomplish the sales, purchases, and exchanges determined upon by the adviser and with respect to which Wilmington Trust Company was given directions by the adviser.

7. The adviser of said fund had full responsibility for any decrease or increase in the value of said

fund, attributable to the investments of the fund, and Wilmington Trust Company accepted no responsibility for any such decrease or increase in the value thereof.

8. The adviser either instructed the Wilmington Trust Company whether and how to vote, and whether directly or by proxy, at any and all elections or stockholders' meetings of companies whose shares of stock were held in said fund, and the manner, the persons and the proposals for or against such votes were to be cast, or instructed the Wilmington Trust Company to deliver its proxy to the adviser for the shares of stock held in said fund in order for the adviser to vote such shares at any and all elections or stockholders' meetings of companies whose shares of stock were held in said fund. In no case, to the best of his knowledge, did Wilmington Trust Company exercise its independent judgment as to the manner, the persons or the proposals for or against which votes of shares of stock held in said fund were cast.

9. The adviser of said fund instructed the Wilmington Trust Company as to the manner to take and to hold any security or other property constituting a part of the fund, whether in bearer form or in the name of the Wilmington Trust Company. In no case, to the best of his knowledge, did Wilmington Trust Company exercise its independent judgment as to such determination but in all cases merely carried out the instructions of the adviser.

1. Dora Browning Donner, in order to accomplish the administration of said fund, appointed all advisors to said fund without whose instructions, to the best of his knowledge, Wilmington Trust Company in no case acted with respect to making investments or selling securities.

John E. Hairsine

AFFIDAVIT OF C. ROBERT BURNS.**(Dated December 17, 1954.)**

1. That he is an attorney at law authorized to practice in the State of Florida. That he is one of the attorneys for ELWYN L. MIDDLETON, guardian of the property of Dorothy B. R. Stewart, a mentally ill person. That as such attorney he has examined the records in the County Judge's Court in and for Palm Beach County, Florida, as they relate to Elizabeth Donner Hansen, Executrix under the Last Will of Dora Browning Donner, deceased.

2. On June 26, 1953, Elizabeth Donner Hanson as Executrix under the Last Will of Dora Browning Donner, deceased, filed her inventory and appraisement in the County Judge's Court in and for Palm Beach County, Florida. Said inventory and appraisement set forth as under the possession and control of said Executrix all of the assets of the decedent, Dora Browning Donner, and included all of the assets theretofore held by Wilmington Trust Company, Wilmington, Delaware, under an agreement between said Wilmington Trust Company and Dora Browning Donner dated March 25, 1935. Thereafter in December, 1953, said Executrix and her attorneys obtained an order of the County Judge's Court authorizing payment to them of fees on the total estate, including all assets held by the Wilmington Trust Company under said agreement of March 25, 1935, and including \$417,000.00 paid out by the said Wilmington Trust Company in January, February, and March, 1954.

3. On January 22, 1954, ELWYN L. MIDDLETON as guardian of the property of Dorothy B. R. Stewart, and KATHERINE N. R. DENCKLA com-

menced an action in the Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, against Elizabeth Donner Hanson individually and as Executrix of the Will of Dora Browning Donner, deceased, et al., the same being No. 31,980. On February 18, 1954, the answering defendants, including Elizabeth Donner Hanson individually and as Executrix as aforesaid, filed a motion to dismiss said complaint on the ground that there was no res in the State of Florida.

4. As said Executrix and her attorneys had treated said \$417,000.00 worth of assets as being part of the estate of said deceased in Palm Beach County, and had paid themselves fees on the same, the plaintiffs in the action hereinabove mentioned filed a petition in the County Judge's Court of Palm Beach County, Florida, to compel the said Elizabeth Donner Hanson, as Executrix, to produce the assets of said estate as authorized by the Florida statutes. Thereupon, on February 26, 1954, the said Executrix and her attorneys filed a motion in said County Judge's Court offering to return approximately \$7,600.00 in Executrix' fees and \$5,700.00 in attorneys' fees which they had collected on the said \$417,000.00 under order obtained from the county judge on December 23, 1953, which treated said assets as part of the assets in the State of Florida. The county judge, on April 9, 1954, stayed further hearing on such matters until the outcome of said case in the Circuit Court.

/s/ C. Robert Burns
C. Robert Burns

* * *

EXCERPTS FROM AFFIDAVIT OF ELWYN L. MIDDLETON.**(Dated September 3, 1954.)**

That on January 22, 1954, he, as such guardian, and the aforesaid Katherine N. R. Denckla, each as plaintiff, filed in the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County, Florida, their chancery suit #31,980, referred to in paragraph 5 of the foregoing motion, a true copy of the complaint in such suit (without exhibits) being attached to this affidavit and made a part hereof.

Such proceedings have been had in such suit that decrees pro confesso have heretofore been entered, after due and proper service of process, upon all defendants therein named (including Delaware Trust Company and Wilmington Trust Company, each as trustee) except as against the defendant Elizabeth Donner Hanson, individually and as executrix of the last will and testament of Dora Browning Donner, deceased, and except as against her children, William Donner Roosevelt, Joseph Donner Winsor and Donner Hanson; each of such defendants against whom no decree pro confesso have been entered have filed answers in such cause;

OPINION.

(Filed December 29, 1955. (119 A. 2d 901).)

HERRMAN, Acting Vice Chancellor.

The Court is called upon to decide (1) whether the doctrine of collateral estoppel precludes the parties from litigating in this action the issue of the validity of a certain written agreement as an *inter vivos* trust agreement; and, if not, (2) whether the trust and the exercises of the power of appointment thereunder are valid or invalid.

This action for declaratory judgment was brought by Elizabeth Donner Hanson, Executrix and Trustee under the Will of Dora Browning Donner, to determine the persons entitled to assets valued at \$417,000. The assets were held at the time of the death of Mrs. Donner by the defendant Wilmington Trust Company under an Agreement entered into by them in 1935. After Mrs. Donner's death, the assets were distributed by Wilmington Trust Company to certain recipients named in Instruments executed by Mrs. Donner in 1949 and 1950 in the exercise of the power of appointment reserved to her under the Agreement of 1935.

The case is before the Court upon four motions for summary judgment. Three of the motions are based upon the contention that the Agreement of 1935 created a valid trust, that the power of appointment thereunder was validly exercised in 1949 and 1950, and that the distributions by Wilmington Trust Company pursuant thereto were properly made in discharge of its duty as Trustee under the Agreement. This is the position taken in the motions for summary judgment

filed by the plaintiff, by Wilmington Trust Company, Trustee, and Edwin D. Steel, Jr., Guardian Ad Litem for three minor defendants, Joseph Donner Winsor, Curtin Winsor, Jr., and Donner Hanson, grandchildren of Mrs. Donner. Opposed to this position is the cross-motion for summary judgment filed by the defendants Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla, other grandchildren of Mrs. Donner. These defendants contend that by application of the doctrine of *res judicata* or collateral estoppel, or by reason of applicable principles of law, this Court must conclude that the Agreement of 1935 was an agency agreement and not a trust agreement; that, therefore, the Instruments of 1949 and 1950 were invalid testamentary acts and the transfer of assets by Wilmington Trust Company thereunder was erroneous because such assets should have been distributed under the Will of Mrs. Donner. These defendants cross-claim and seek a judgment against Wilmington Trust Company in the amount of \$417,000. The defendant Delaware Trust Company, Trustee, supports the motions of the proponents of the Trust. Robert B. Walls, Jr., Guardian Ad Litem for the defendants Dorothy B. R. Stewart and William Donner Denckla, incompetent daughter and minor grandson of Mrs. Donner, supports the motion of the opponents of the Trust. The pending motions are based upon the pleadings and exhibits thereto, affidavits, depositions and certified copies of the Florida proceedings herein-after discussed.

There does not appear to be any genuine issue as to any of the following facts:

1. The plaintiff has been barred from proceeding further herein by an injunction issued to her by the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County, pursuant to the decree of that Court hereinafter discussed.

Under the Agreement with Wilmington Trust Company, dated March 25, 1935, Mrs. Donner transferred to it certain designated securities. The Agreement provided that Wilmington Trust Company, as Trustee, should pay the net income of the trust fund to Mrs. Donner for life and, upon her death, should transfer the trust fund, free from the trust, "unto such person or persons * * * as Trustor shall have appointed by the last instrument in writing which she shall have executed and delivered to Trustee."

Thereafter, Mrs. Donner executed and delivered to Wilmington Trust Company an Instrument, dated December 3, 1949, in which, after revoking earlier Instruments by which she purportedly had exercised her power of appointment, she again purported to exercise the power of appointment by directing that, upon her death, the Trustee should transfer the trust fund as follows: (1) \$4,000 to three named individuals; (2) \$1,000 to each of certain servants; (3) \$10,000 to Louisville Trust Company in trust for Benedict H. Hanson, a son-in-law of Mrs. Donner; (4) \$10,000 to the Bryn Mawr Hospital; (5) \$200,000 to the Delaware Trust Company in trust for Joseph Donner Winsor; (6) \$200,000 to the Delaware Trust Company in trust for Donner Hanson; and (7) the residue to the Executrix under Mrs. Donner's Will to be dealt with as stated therein. Mrs. Donner thereafter executed and delivered to Wilmington Trust Company an Instrument, dated July 7, 1950, which purported to partially revoke the Instrument of December 3, 1949 by deleting therefrom the provision for \$10,000 to the Louisville Trust Company, Trustee. In all other respects, the Instrument of 1950 confirmed the Instrument of 1949.

At the time of the execution of the Agreement of 1935, Mrs. Donner was a resident of Pennsylvania. The securities referred to in the Agreement were delivered

to Wilmington Trust Company in Delaware and they remained in Delaware in the possession of and under the administration of the Trust Company. Wilmington Trust Company has no place of business and transacts no business outside of Delaware.

When Mrs. Donner died in 1952, she was a resident of Palm Beach County, Florida, and had been such since 1944. The Will of Mrs. Donner, dated December 3, 1949, was probated there and the plaintiff herein, Elizabeth Donner Hanson, duly qualified as Executrix under the Will. After bequeathing her personal and household effects to Mrs. Hanson and Dora Donner Ide, two of her daughters, Mrs. Donner made the following disposition of the residue of her property, "including any and all property, rights and interests over which I may have power of appointment which prior to my death as not been effectively exercised by me or has been exercised by me in favor of my Executrix": (1) Payments of all death taxes on property appointed by Mrs. Donner under the 1935 Agreement; and (2) the balance to be divided into two equal parts: (a) one part to Delaware Trust Company in trust for Katherine N. R. Denckla, another daughter; and (b) the other part to Mrs. Hanson in trust for Dorothy B. Rodgers Stewart, another daughter, during her lifetime and after her death to Delaware Trust Company in trust for Mrs. Denckla.

When Mrs. Donner died, the securities and cash held by Wilmington Trust Company under the 1935 Agreement amounted to \$1,493,629.91. Thereafter, Wilmington Trust Company distributed cash and securities aggregating \$417,000 in accordance with the provisions of the Instruments of 1949 and 1950 and deposited the balance to the account of Mrs. Hanson as Executrix and Trustee under the Will of Mrs. Donner. None of the trust funds distributed to Dela-

ware Trust Company, Trustee, have ever been held or administered outside of Delaware.

In January 1954, Mrs. Denckla and Elwin L. Middleton, guardian of the property of Mrs. Stewart, brought an action in the Circuit Court of Palm Beach County, Florida, against Mrs. Hanson, individually and as Executrix of Mrs. Donner's Will, Wilmington Trust Company, Delaware Trust Company and others who were interested in the assets, directly or beneficially, by reason of appointment or the residuary clause of the Will. The Florida action sought a declaratory judgment determining what passed under the Will and the authority of the Executrix over the assets held by Wilmington Trust Company under the 1935 Agreement. Neither Wilmington Trust Company, Delaware Trust Company nor any of the other appointees under the Instrument of 1949, named defendants in the action, were served personally and they did not appear in the action. None of the assets held by Wilmington Trust Company under the Agreement of 1935 have ever been held or administered in Florida. On January 14, 1955, a "summary final decree" was entered by the Florida Court holding (1) that the Court lacked jurisdiction over the assets in Delaware and over Wilmington Trust Company, Delaware Trust Company, and the other nonanswering defendants and that the complaint be dismissed without prejudice as to all such defendants; and (2) that no present interest passed to any beneficiary other than Mrs. Donner under the Agreement of 1935 and the Instrument of 1949 and that the Instrument was testamentary in character and invalid as a testamentary disposition because it was not subscribed by two witnesses as required by Florida law; and (3) that, therefore, as to the parties before the Florida Court, the assets held by Wilming-

ton Trust Company under the Agreement of 1935 passed under the residuary clause of Mrs. Donner's Will.

In the meanwhile, in July 1954, the instant action was begun by Mrs. Hanson as Executrix and Trustee under Mrs. Donner's Will. Named herein as defendants are Wilmington Trust Company as Trustee, Delaware Trust Company as Trustee, the appointees named in the Instruments of Appointment executed by Mrs. Donner, residuary legatees under Mrs. Donner's Will and others having beneficial interests. The complaint herein alleges that it was filed because of the desire of the Executrix to settle the matters in controversy finally and conclusively "as to all parties so that she may effectively perform all of her duties, account as Executrix and enter upon her duties as Trustee." The complaint alleges that no part of the assets involved were located in Florida and that Wilmington Trust Company, Delaware Trust Company and certain other indispensable parties were not before the Florida Court; that, therefore, that Court could not render "an effective and binding decree." The prayer of the complaint in this action is that this Court determine by declaratory judgment the persons who, at the time of Mrs. Donner's death, were entitled to participate in the assets held in trust by Wilmington Trust Company under the 1935 Agreement.

F. *Collateral Estoppel*

The first question to be decided is whether by reason of the Florida decree, the parties hereto are precluded from litigating in this action the issue of the validity of the Agreement of 1935 as a trust agreement. This is the ultimate question because the validity of the exercises of the power of appointment de-

pend, in this case, upon the validity of the basic Agreement. See *Wilmington Trust Co. v. Wilmington Trust Co.*, 26 Del. Ch. 397, 24 A.2d 309, 312, 139 A.L.R. 1117.

[1, 2] The opponents of the Trust assert the doctrines of *res judicata* and collateral estoppel. The doctrine of *res judicata* is not applicable because the Florida action and this action involve different causes of action. The refinement of the *res judicata* doctrine known as the doctrine of collateral estoppel may be applicable, however, the difference in causes of action notwithstanding. See *Niles v. Niles*, Del. Ch., 111 A.2d 697; *Petrucci v. Landon*, 9 Terry 491, 107 A.2d 236; Scott, "Collateral Estoppel by Judgment," 56 Harv. L.Rev. 1. The question, then, is whether the doctrine of collateral estoppel may be invoked as an affirmative defense by the opponents of the Trust to preclude the other parties from obtaining a determination by the courts of this State as to the validity of the Trust. I am of the opinion that this question must be answered in the negative.

The Florida Court made determinations incidentally that it would not have had the jurisdiction to make directly. The action before the Florida Court was brought to determine what passed under the residuary clause of the Will of Mrs. Donner, a Florida domiciliary. As necessary but incidental determinations in that action, the Florida Court concluded that the Agreement of 1935 was invalid as a trust agreement and that, therefore, the exercise of the power of appointment in 1949 was testamentary.²

2. The decree of the Florida Court contained no expressed conclusion regarding the invalidity of the Agreement of 1935 as an agreement of trust. Since, however, such determination must have been made before the Court could reach the expressed conclusion that the exercise of the power was testamentary, the prerequisite determination as to the invalidity of the Agreement must be said to be implicit in the decree.

[3] In a direct proceeding, the Florida Court would not have had the jurisdiction to determine the essential validity of an *inter vivos* trust created in Delaware, all of the assets of which were in Delaware and the Trustee of which is a Delaware corporation which was not before the Court. Since neither the Trust *res* nor the Trustee were within the jurisdiction of the Florida Court, it is clear that that Court could not have determined the essential validity of the purported Trust in a direct proceeding brought for the purpose. 54 Am.Jur. "Trusts" §§ 564, 584; Lines v. Lines, 142 Pa. 149, 21 A. 809; compare In re Harri-man's Estate, 124 Misc. 320, 208 N.Y.S. 672; Harvey v. Fiduciary Trust Co., 299 Mass. 457, 13 N.E.2d 299; Land, "Trusts in the Conflict of Laws," Secs. 41, 43.

[4] The principle is settled that where a court has incidentally determined a matter which it would have had no jurisdiction to determine directly, the judgment is not conclusive in a subsequent action brought to determine directly such incidental matter. In his important and widely quoted discussion of "Col-lateral Estoppel by Judgment," 56 Harv.L.Rev. 1, 18, Professor A. W. Scott states:

"* * *. It may happen, however, that the court has jurisdiction to determine the cause of action, but that in determining it the court must necessarily decide a question which it would have no jurisdiction to determine in an action brought expressly for its determination. In such a case the judgment of the court is valid, and the cause of action will be extinguished, the judgment operating by way of merger or bar. The question then arises as to the effect by way of col-lateral estoppel of the determination of the particular

matter on which the judgment was based. Although the authorities are somewhat meager, it seems clear that the judgment should not preclude the parties as to the matter in a subsequent action between them brought expressly to determine the matter in a court which has jurisdiction to determine it. It seems clear, also, that after such determination in a subsequent suit, it is the determination of the court in that suit, and not the incidental determination in the prior suit, which is conclusive between the parties."

See also Restatement of Judgment, § 71; *Petrueci v. Landon*, supra; dissent of Rutledge, J. in *Geracy, Inc., v. Hoover*, 77 U.S. App.D.C. 55, 133 F.2d 25, 147 A.L.R. 185.

In the final analysis, the question becomes one of public policy. At 56 Harv.L.Rev. 1, 22, Professor Scott states:

"The question in all these cases is one of public policy. Should a court which has not been entrusted with jurisdiction to determine a matter directly be permitted to determine it incidentally, not merely for the purpose of deciding the controversy which it can properly decide, but also with the effect of precluding the parties from litigating the question in those courts which alone are entrusted with jurisdiction to determine it directly?"

This eminent authority on the subject concludes with the admonition that the application of the doctrine of collateral estoppel must always be based upon a sound public policy and that care "must be exercised in its application to see that it works no injustice."

[5] It is my opinion that it would be contrary to sound public policy for this Court to consider itself

bound and divested of its duty to determine the essential validity of a Delaware *inter vivos* trust in a direct proceeding brought for the purpose on the ground that a Court in a sister jurisdiction has incidentally determined the matter in another cause of action in which neither the trust *res* nor the Trustee was before the Court. The doctrine of collateral estoppel is a judge-made rule. I do not think that it should be enlarged to the extent of depriving the parties herein of a direct determination by this Court as to the validity of the Trust.

[6] Since the purported Trust was created in Delaware and since the assets have been held by the Trustees in Delaware at all times, the "home" of the Trust is in Delaware and its validity must be determined by the law of Delaware. *Wilmington Trust Co. v. Wilmington Trust Co.*, supra; *Wilmington Trust Co. v. Sloane*, 30 Del.Ch. 103, 54 A.2d 544. This is a case of first impression in this State as to an important phase of the question of the validity of the Trust. The law of this State must be formulated here. It would be contrary to public policy for the Courts of this State to relinquish their duty of enunciating the law controlling a trust having its situs in Delaware and to thereby relegate the Trustee and the Trust *res* here involved to the law prevailing in another jurisdiction. Compare *Taylor v. Crosson*, 11 Del. Ch. 145, 98 A. 375.

[7] Moreover, the application of the doctrine of collateral estoppel might work injustice in this, a case which involves only questions of law. It could mean that the parties who were before the Court in the Florida action would be subjected to one conclusion of law while *Wilmington Trust Company*, *Delaware Trust Company* and other appointees and beneficiar-

ies, who did not appear in the Florida action, would be controlled by a different rule of law. This could mean that (1) as to the parties before the Florida Court, the disposition of assets would be governed by the residuary clause of the Will, but (2) as to the parties who were not before the Florida Court, the disposition of assets would be governed by the terms of the 1935 Agreement and the exercises of the power of appointment thereunder. This would result in chaos and injustice. The possibility of such result militates against application of the doctrine of collateral estoppel in any case. See Restatement of Judgments, § 70 and com. f, 1948 Supp.; Scott "Collateral Estoppel by Judgment," 56 Harv.L.Rev. 1, 10.

The opponents of the Trust place principal reliance upon *Niles v. Niles*, supra. That case is not applicable because there the issue previously determined incidentally by the New York Court also arose incidentally before the Chancellor. I do not consider anything stated herein to be in conflict with the decision in the *Niles* case. The other cases cited by the opponents of the Trust have been examined and have been found to be inapposite. See *Slater v. Slater*, 372 Pa. 519, 94 A.2d 750; *Ugast v. LaFontaine*, 189 Md. 227, 55 A.2d 705; *United States v. Silliman*, 3 Cir., 167 F.2d 607; *William Whitman Co. v. Universal Oil Products Co.*, D.C.D.Del., 92 F. Supp. 855; *United States v. Stone & Downer Co.*, 274 U.S. 225, 47 S.Ct. 616, 71 L.Ed. 1013.

It is concluded that no determination made in the Florida action is conclusive in this action as to the validity of the Agreement of 1935 as a trust agreement. The parties herein will not be precluded by the defense of collateral estoppel from obtaining the decision of this Court upon that issue.

II. *Essential Validity of the Trust Agreement*

In order to determine the essential validity of the Agreement of 1935 as a trust agreement, it is necessary to consider its pertinent provisions in some detail.

The Agreement was a formal document, executed by Mrs. Donner and Wilmington Trust Company, in which Mrs. Donner was referred to as Trustor and Wilmington Trust Company was referred to as Trustee. It was recited that the Trustor "desires to establish a trust of certain securities and property" referred to as the "trust fund." It was stated that the Trustor thereby "assigned, transferred and delivered" certain listed securities and property to the Trustee in trust to "hold, manage, invest and reinvest the trust fund, collect the income thereof and pay out of such income all taxes, charges and expenses payable thereout." The Agreement provided for the payment of the net income of the trust fund to the Trustor during her lifetime and, upon her death, the Trustee was directed to convey the fund "free from this trust, unto such person or persons and in such manner and amounts and upon such trusts, terms and conditions as Trustor shall have appointed by the last instrument in writing which she shall have executed and delivered to Trustee"; or in the absence of such instrument, "by her Last Will and Testament, or in default of any such appointment then unto the then living issue of Trustor, per stirpes and not per capita." In default of exercise of the power of appointment and living issue, the fund was to go to the Trustor's next of kin. The Agreement then conferred upon the Trustee all of the ordinary general and broad powers usually conferred upon a Trustee, including the power to retain any and all stocks and securities, to sell and exchange the same, to invest the proceeds of any sales, to vote stock, to

participate in reorganizations, to determine whether expenses and other disbursements shall be charged against income or principal, and to hold bearer securities in its own name or in the name of its nominees. It was provided, however, that the Trustee shall exercise its power to sell or exchange trust property, to invest the proceeds of any such sale or other available money and to participate in plans of reorganization, merger, etc., only upon the written direction of, or with the written consent of the Adviser of the trust; provided that if there should be no Adviser, or if the Adviser should fail to act within a ten day period, the Trustee might exercise all such powers and "take such action in the premises as it, in its sole discretion, shall deem to be for the best interest of the beneficiary of this trust." The Trustor named as Adviser her husband or "such other person or persons as Trustor may nominate in writing delivered to Trustee during her lifetime." The Trustor reserved the right to amend or revoke the Trust Agreement in whole or in part and, further, she reserves the right to change the Trustee.

Thus, by the Agreement of 1935, Mrs. Donner reserved to herself the following significant rights and powers: (1) the right to all of the net income for life; (2) the right to amend or revoke the Agreement in whole or in part; (3) the right to change the Trustee; (4) the right to name and change an investment Adviser. The question here presented revolves about those reservations. The opponents of the Trust contend that the cumulation of the reservations created an agency relationship between Mrs. Donner and the Wilmington Trust Company and not a trust relationship; that, therefore, the disposition, insofar as it was intended to take effect after Mrs. Donner's death, was testamentary and invalid for failure to comply with the Florida law relating to the validity of Wills.

[8] It is my opinion that under the law of this State, which governs the essential validity of the Agreement of 1935 as a trust agreement, the reservations of rights and powers made therein by Mrs. Donner did not defeat the *inter vivos* trust she so clearly intended to create by that Instrument.

The law seems settled as to the first three reservations here involved. *Equitable Trust Co. v. Paschall*, 13 Del.Ch. 87, 115 A. 356, stands for the proposition that the reservation of a life interest plus the reservation of the power to revoke an *inter vivos* trust does not invalidate the trust. See also 1 Scott on Trusts, § 57.1; Restatement of Trusts, § 57.; 1 Bogert, Trusts and Trustees, p. 483; *Leahy v. Old Colony Trust Co.*, 326 Mass. 49, 93 N.E.2d 298. Furthermore, the power of the settlor of an *inter vivos* trust to change the trustee has judicial sanction in this State. See *Wilmington Trust Co. v. Wilmington Trust Co.*, supra.

The brunt of the attack on the Agreement of 1935 is centered upon its provisions for the appointment of an investment Adviser and the requirement that the Trustee be governed by the Adviser as to (1) any sale or exchange of trust property; (2) any investment of the proceeds of such sale or of other available money; and (3) any participation in plans of reorganization, merger, etc., of any company in which the Trustee might hold securities. It appears that the effect of such provisions upon the validity of an *inter vivos* trust has not been directly decided in this State.

It seems to be settled that an intended *inter vivos* trust does not become testamentary because the trustor reserves the power to direct the trustee as to the making of investments. See Restatement of Trusts, § 57(2) and comment thereon; 1 Scott on Trusts, § 57.2; 1 Bogert, Trusts and Trustees, § 104; *National Shawmut Bank of Boston v. Joy*, 315 Mass. 457, 53 N.E.2d 113,

125. If the trustor may personally direct or veto investments by the trustee without impairing the validity of an *inter vivos* trust, it would seem to follow that the trustor may assign that authority to a third party, called "adviser," without destroying the validity of the trust. Such investment counselor has been considered to be a fiduciary, a co-trustee or a quasi-trustee. See *Gathright's Trustee v. Gaut*, 276 Ky. 562, 124 S.W.2d 782, 120 A.L.R. 1403, and Annotation 120 A.L.R. 1407; Restatement of Trusts, § 185; Scott on Trusts, § 185; 1 Bogert, Trusts and Trustees, p. 536. In *Equitable Trust Co. v. Union National Bank*, 25 Del. Ch. 281, 18 A.2d 288, this Court found it unnecessary to determine whether or not an investment adviser was a fiduciary. Whatever the precise relationship between the Trustor and the Adviser or the Trustee and the Adviser may be called, I think it is clear that if Mrs. Donner might have reserved to herself the power to specify investments and to direct or veto the Trustee as to investment policy, without impairing the validity of the *inter vivos* Trust, she may properly delegate that power to another without destroying the *inter vivos* Trust she so clearly intended to create.

[9] The intent of the Trustor is a critical and controlling factor in determining whether an agency or a trust was created by the Agreement of 1935. See 1 Scott on Trusts (1954 Supp.) § 57.2, p. 74. It is beyond question, I think, that it was Mrs. Donner's intent that the 1935 Agreement should create an *inter vivos* trust. In the document, she called herself "Trustor," she called Wilmington Trust Company "Trustee" and she referred to the "trust fund" she was thereby conveying to the Trustee.

[10] It appears that there is no established limit to the nature or extent of the powers which the settlor

of a valid *inter vivos* trust may reserve so long as the settlor does not reserve the right to control the trustee as to the details of the administration of the trust. If, however, the settlor reserves such power to control the trustee as to the details of the administration of the trust as to make the trustee a mere agent of the settlor, the disposition may be testamentary so far as it is intended to take effect after the settlor's death. See Restatement of Trusts, § 57(2); 1 Bogert, Trusts and Trustees, § 104, p. 490.

In the Agreement of 1935, Mrs. Donner did not reserve to herself control over the details of the administration of the Trust as would constitute the Trustee an agent under the principal above stated. In the Agreement, she conveyed title and broad powers to the Trustee limited only by the obligation of the Trustee to consult and follow the advice of the investment counselor. The opponents of the Trust contend, however, that an examination of the actual operation of the Trust Fund, as disclosed by affidavits and depositions, reveals that the Trustee permitted the Adviser to usurp all of its powers and functions as to the details of administration and that, in reality, the Trustee was nothing more than a custodian of the securities.

[11-13] Under the circumstances of this case, the *modus operandi* adopted by the Trustee and the Adviser is immaterial to the question of whether the Agreement of 1935 created a relationship of trust or of agency. In the absence of ambiguity, fraud, duress or mistake, the intent of the Trustor and the nature of the relationship created by the Agreement of 1935 is to be determined from the face of the Instrument itself. See Restatement of Trusts, § 38(2), Comment a. There is no showing that Mrs. Donner knew of the facts relied upon by those who assert an agency instead of a trust, nor is there any showing that she was in any way responsible for any surrender of function

which may have taken place as between the Trustee and the Adviser in the operation of the trust. Even if we disregard its vigorous denials and assume that the Trustee abandoned its powers and duties to the Adviser, as asserted by the opponents of the Trust, such situation would not convert a trust agreement into an agency agreement in the absence of the knowledge or consent of Mrs. Donner. A trustor, intending to create an *inter vivos* trust, may not be thwarted by an *ex parte* act or failure to act on the part of the trustee.

It is manifest upon the face of the Agreement that an *inter vivos* trust was intended. Effect will be given to the Agreement in accordance with its plain terms so that the clear intent of the Trustor will not be defeated.

[14] The opponents of the Trust place principal reliance upon Restatement of Trusts, § 56; *In re Pengelly's Estate*, 374 Pa. 358, 97 A.2d 844; *Frederick's Appeal*, 52 Pa. 338, and *In re Hurley's Estate*, 16 Pa. Dist. & Co. 521. In Restatement of Trusts, § 56, it is stated that if no interest passes to the beneficiaries before the death of the settlor, the intended trust is testamentary. That principle is not applicable in the instant case because present interests were created at the time of the execution and delivery of the Agreement of 1935 and the exercises of the power of appointment thereunder. The Agreement provided for an ultimate disposition of the assets to "then living issue of Trustor," subject to defeasance by revocation or exercise of the power of appointment. Present interests were thus created when the Agreement and exercises thereunder were executed, even though such interests could not fall into possession until after the death of Mrs. Donner and even though such interests might be ultimately defeated by further exercise of the power of appointment or by revocation. See 1 Bogert, *Trusts and Trustees*, pp. 481-483; Restatement

of Property, § 157, Comments P, Q and R; Gray on Perpetuities, § 112; Simes, Future Interests, § 80; Leahy v. Old Colony Trust Co., supra. Since present interests passed under the Agreement and the exercises of the power of appointment and only the enjoyment thereof was postponed until the Settlor's death, the *inter vivos* trust here is not defeated by application of the principle stated in § 56 of the Restatement of Trusts. See Brown v. Pennsylvania Co., 2 W.W. Harr. 525, 126 A. 715; Security Trust & Safe Deposit Co. v. Ward, 10 Del.Ch. 408, 93 A. 385; Wilmington Trust Co. v. Wilmington Trust Co., supra; Restatement of Trusts, § 57(1); 1 Scott on Trusts, § 57.1

The case of *In re Pengelly's Estate*, supra, does not aid the opponents of the Trust because that case is distinguishable on its facts. There it was found by the Court that the trust instrument merely continued a previously existing agency relationship and the Settlor had reserved complete power to control the Trustee in the administration of the trust. Moreover, the Court in the cited case was concerned with the public policy requiring protection of the rights of widows. The cases of *Frederick's Appeal*, supra, and *In re Hurley's Estate*, supra, are likewise clearly distinguishable on their facts and of no assistance.

[15] It is held that the Agreement of 1935 created a valid *inter vivos* Trust. Since the Trust was valid, the exercises of the power of appointment thereunder by the Instruments of 1949 and 1950 were valid. *Wilmington Trust Co. v. Wilmington Trust Co.*, supra. Accordingly, the distributions made by Wilmington Trust Company constituted a proper discharge of its duties as Trustee under its Agreement with Mrs. Donner.

The motions for summary judgment filed by the Lewis defendants will be denied. The other motions for summary judgment filed herein will be granted.

JUDGMENT.

AND NOW TO-WIT this 13th day of January, A.D. 1956, the above entitled action for a declaratory judgment and other and further relief having been referred for hearing and determination to the Honorable Daniel L. Herrmann as Acting Vice Chancellor by order of July 19, 1955; and having come on to be heard upon (1) the Motion for Summary Judgment of Edwin D. Steel, Jr., guardian *ad litem* for Joseph Donner Winsor, Donner Hanson and Curtin Winsor, Jr. filed November 18, 1954, (2) the Motion for Summary Judgment of Wilmington Trust Company filed June 21, 1955, and (3) the Motion for Summary Judgment of Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla filed July 22, 1955; and the Court having considered the pleadings and exhibits, affidavits, depositions, certified copies of the Florida proceedings and other documents filed in support of and in opposition to said motions for summary judgment; briefs having been filed and the Court having heard oral argument; and the Court having found that there is no genuine issue as to any material fact and having concluded that Edwin D. Steel, Jr., guardian *ad litem* for Joseph Donner Winsor, Donner Hanson and Curtin Winsor, Jr., and Wilmington Trust Company are entitled to judgment as a matter of law; and the Court having filed its Opinion dated December 28, 1955;

AND it appearing that prior to the entry of said Order of Reference of July 19, 1955, several other motions had been filed and were pending to-wit:

Motion of Defendants Dora Stewart Lewis, Mary Washington Stewart Borie and Paula

Browning Denckla to Dismiss filed September 27, 1954;

Motion of Wilmington Trust Company and Delaware Trust Company filed February 17, 1955 for default judgment under Rule 55(b);

Motion of Robert B. Walls, Jr., guardian *ad litem* of Dorothy B. R. Stewart filed February 18, 1955 to strike motion of Wilmington Trust Company and Delaware Trust Company for default judgment;

Motion of Defendants Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla filed February 23, 1955 to strike motion of Wilmington Trust Company and Delaware Trust Company for default judgment;

and it appearing that subsequent to the entry of said Order of Reference of July 19, 1955 several additional motions, a counterclaim and two cross claims were filed, to-wit:

Counterclaim of defendants Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla against Elizabeth Donner Hanson, Executrix and Trustee, etc. filed July 22, 1955;

Cross claim of defendants Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla against Wilmington Trust Company and Delaware Trust Company filed July 22, 1955;

Motion of Edwin D. Steel, Jr., guardian *ad litem* as aforesaid filed September 22, 1955 for default judgment pursuant to Rule 55(b);

Motion of Robert B. Walls, Jr., guardian *ad litem* of Dorothy B. R. Stewart filed September 22, 1955 to strike motion of Edwin D. Steel, Jr., guardian *ad litem* as aforesaid, for default judgment; and

Motion of defendants Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla filed September 2, 1955 to strike motion of Edwin D. Steel, Jr., guardian *ad litem* as aforesaid for default judgment;

and it appearing to the Court that the disposition of all of said additional motions, the counterclaim and two cross claims is now appropriate because of the disposition of said three motions for summary judgment made by Paragraphs (1) and (2) of this Order;

IT IS ORDERED, ADJUDGED AND DECREED

(1) That the Motion to Dismiss filed September 27, 1954 and the Motion for Summary Judgment filed July 22, 1955 by defendants Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla be and the same hereby are denied;

(2) That the Motion for Summary Judgment of Edwin D. Steel, Jr., guardian *ad litem* for Joseph Donner Winsor, Donner Hanson and Curtin Winsor, Jr. filed November 18, 1954 and the Motion for Summary Judgment of Wilmington Trust Company filed June 21, 1955 be and the same hereby are granted, and in accordance with said motions and the prayers of the complaint it is expressly adjudged, declared and determined:

(a) That by virtue of the Agreement of March 26, 1935 between Dora Browning Donner and Wilmington Trust Company, a copy

of which is attached as Exhibit B to the Complaint filed herein, there was created a valid trust under the laws of the State of Delaware;

(b) The execution and delivery by Dora Browning Donner (sometimes referred to as Dora E. Donner) to the Wilmington Trust Company of the document dated December 3, 1949 (Complaint Exhibit C), and the execution and delivery by Dora Browning Donner to the Wilmington Trust Company of the document dated July 7, 1950, (Complaint Exhibit D), constituted valid and effective exercises of the power of appointment reserved to Dora Browning Donner under the agreement dated March 25, 1935, between Dora Browning Donner and Wilmington Trust Company (Complaint Exhibit B).

(c) The payments referred to in paragraph 15 of complaint made by Wilmington Trust Company, Trustee under the agreement dated March 25, 1935 between Dora Browning Donner and Wilmington Trust Company, to Delaware Trust Company, Trustee under Trusts No. 9022 and 9023, in accordance with paragraph 2(a) of the instrument dated December 3, 1949 (confirmed by paragraph 2 of the instrument dated July 7, 1950) were valid and proper payments and constituted a lawful discharge of Wilmington Trust Company's duty as Trustee under said Agreement of March 25, 1935.

(d) In addition to the payments specified in the preceding subparagraph (c) each and every other distribution made by defend-

ant Wilmington Trust Company of property held by it pursuant to said Agreement of March 25, 1955 between Dora Browning Donner and Wilmington Trust Company as set forth in paragraph 15 of the Complaint were valid and proper distributions and constituted a lawful discharge of Wilmington Trust Company's duty as Trustee under said Agreement of March 25, 1935.

(3) All parties to this litigation are forever bound by the declarations, adjudications and determinations contained in subparagraphs (a), (b), (c) and (d) of Paragraph (2) hereof.

(4) That the counterclaim of defendants Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla against Elizabeth Donner Hanson, as Executrix and Trustee under the last Will and Testament of Dora Browning Donner, deceased, filed July 22, 1955, be and the same hereby is dismissed with prejudice.

(5) That the cross-claims of defendants Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla against Delaware Trust Company and Wilmington Trust Company filed July 22, 1955 be and the same hereby are dismissed with prejudice.

(6) That pursuant to Rule 55(b) and in accordance with the motion of Edwin D. Steel, Jr., guardian *ad litem* as aforesaid, filed September 22, 1955 and with the motion of Wilmington Trust Company and Delaware Trust Company filed February 17, 1955, judgment by default with respect to all matters, property rights and interests, legal and equitable, decreed, adjudicated and determined by Paragraph (2) (including sub-

paragraphs (a), (b), (c) and (d) thereof) and Paragraph (3) of this Judgment is granted against the following named defendants for the reason that they have failed to appear and answer the complaint herein on or before September 10, 1954, pursuant to the orders of the Court herein entered on July 29, 1954 and August 12, 1954 and have not appeared or answered up to this time:

Katherine N. R. Denckla

Hebe Sound, Florida

Elwyn L. Middleton, Guardian of the
property of Dorothy B. R. Stewart, a
mentally ill person,

Harvey Building

West Palm Beach, Florida

Bryn Mawr Hospital

Bryn Mawr, Pennsylvania

Miriam V. Moyer

1710 Fidelity-Philadelphia Bldg.

Philadelphia, Pa.

James Smith

221 Williams Street

Rosemont, Pa.

Walter Hamilton

Rosemont, Pa.

Dorothy A. Doyle

5108 Penn Street

Philadelphia 24, Pa.

Ruth Brenner

4224 Osage Avenue

Philadelphia 4, Pa.

Mary Glackens

4930 Westminster Avenue

Philadelphia 31, Pa.

Louisville Trust Company, as Trustee
for Benedict H. Hanson and as Trustee
under Agreements with William H.
Donner,

Louisville, Kentucky

Benedict H. Hanson

510 Park Avenue

New York, New York

William Donner Roosevelt

2540 South Ocean Boulevard

Palm Beach, Florida

John Stewart

Beechwood Road

Rosemont, Pa.

(7) That (1) the Motion of Robert B. Walls, Jr., guardian *ad litem* of Dorothy B. R. Stewart, filed February 18, 1955, to strike motions of Wilmington Trust Company and Delaware Trust Company for default judgment under Rule 55(b), (2) the Motion of Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla filed February 23, 1955 to strike motion of Wilmington Trust Company and Delaware Trust Company for default judgment under Rule 55(b), (3) the Motion of Robert B. Walls, Jr., guardian *ad litem* of Dorothy B. R. Stewart filed September 22, 1955 to strike motion of Edwin D. Steel, Jr., guardian *ad litem* as aforesaid, for default judgment under Rule 55(b), and (4) the Motion of Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla filed September 27, 1955 to strike Motion of Edwin D. Steel, Jr., guardian *ad litem* as aforesaid, for default judgment under Rule 55(b), be and the same hereby are respectively denied.

(8) That upon application of any interested party this Court will determine what counsel fees, expenses and disbursements shall be allowed out of any *res* before this Court, and jurisdiction is hereby reserved for that purpose.

D. L. Herrmann

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MOTION FOR NEW TRIAL.

(Filed January 20, 1956.)

COME NOW, Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla, by and through their attorneys, Arthur G. Logan and Aubrey B. Lank, and pursuant to Rule 59 of the Rules of the Court of Chancery of the State of Delaware MOVE this Court for a new trial and as grounds therefore say:

1. That this Court has failed to give full faith and credit to a judgment of the Circuit Court of Palm Beach County, Florida, known as "Katherine N. R. Denckla, individually, et al., Plaintiffs, vs. Wilmington Trust Company, a Delaware corporation, et. al., Defendants" in Chancery number 31,980, dated January 14, 1955, in accordance with Article 4, Section 1 of the Constitution of the United States.

2. That this Court erred as a matter of law in holding that any present interest passed to the beneficiaries under the Agreement of March 25, 1935, between Dora Browning Donner and Wilmington Trust Company, and the powers of appointment purportedly executed in conformity therewith.

3. That this Court erred as a matter of law in finding that the doctrine of collateral estoppel does not apply against all the appearing parties to this action.

4. That this Court erred as a matter of fact and law in holding the Agreement of March 25, 1935 a valid trust agreement when both in fact

and law said Agreement was and is an agency agreement by reason of the controls retained by the alleged settlor or trustor, Dora Browning Donner, and by reason of the controls which she reserved through the so-called advisor to this alleged trust.

5. That this Court erred as a matter of fact in holding that the relationship between the so called settlor or trustor, Dora Browning Donner, and her first advisor was not an existing agency at the time of the execution of the Agreement on March 25, 1935, in that the affidavit of C. Kenneth Baxter dated December 27, 1954, shows that he was, prior to and on March 25, 1935, an investment advisor to William Hanson Donner and members of his family, which included Dora Browning Donner, and companies owned or controlled by them.

6. That this Court erred as a matter of law in granting the Defendants, Wilmington Trust Company, Delaware Trust Company and Edwin D. Steel, Jr., Esquire, guardian *ad litem* for Joseph Donner Winsor, Curtin Winsor, Jr. and Donner Hanson, Motions for Summary Judgment in that there is a factual dispute as to whether an agency existed between Dora Browning Donner and the first settlor and whether it continued after the alleged trust was entered into on March 25, 1935.

7. That this Court erred as a matter of law in holding that a settlor or trustor must consent to any surrender of duties between a trustee and an advisor pertaining to the operation of the trust, where as here the advisor and trustee were both the agents of the settlor.

8. That this Court erred as a matter of law in holding that the alleged trustor intended to create a valid trust on March 25, 1935, as such intent must be read from the trust instrument itself and such intent is lacking in the alleged trust agreement of March 25, 1935.

/s/Arthur G. Logan

/s/ Aubrey B. Lank

Attorneys for Defendants, Dora
Stewart Lewis, Mary Washing-
ton Stewart Borie and Paula
Browning Denckla,
400 Continental American
Building,
Wilmington, Delaware.

Dated: January 19, 1956.

ORDER.**(Filed January 25, 1956.)**

AND NOW, TO WIT: this 25th day of January, A.D. 1956, the Motion of Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla, For New Trial pursuant to Rule 59 of the Rules of the Court of Chancery of the State of Delaware, filed herein on January 20, 1956, having come on to be heard, IT IS

ORDERED, ADJUDGED and DECREED that the said Motion For New Trial filed herein by Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla, be and the same hereby is denied.

/s/ D. L. Herrmann
Judge

[fol. 203] EXCERPT FROM BAXTER AFFIDAVIT (November 12, 1954, Par. 9). Omitted. Printed side page A 112 ante.

[fol. 204] EXCERPT FROM BAXTER AFFIDAVIT (November 12, 1954). Omitted. Printed side page 329 infra.

[fol. 205] IN THE SUPREME COURT OF THE
STATE OF DELAWARE

No. 8, 1956

APPEAL FROM THE COURT OF CHANCERY OF THE STATE OF
DELAWARE IN AND FOR NEW CASTLE COUNTY,
CIVIL ACTION NO. 531

DORA STEWART LEWIS, MARY WASHINGTON STEWART BORIE
and PAULA BROWNING DENCKLA, Defendants Below,
Appellants,

v.

ELIZABETH DONNER HANSON, as Executrix and Trustee
under the Last Will of Dora Browning Donner, de-
ceased, Plaintiff Below, Appellee,

WILMINGTON TRUST COMPANY, a Delaware corporation,
Trustee, etc., et al., Defendants Below, Appellees.

MOTION OF ROBERT B. WALLS, JR., GUARDIAN AD LITEM
FOR LEAVE TO FILE JOINT BRIEFS WITH APPELLANTS—
Filed April 13, 1956

Robert B. Walls, Jr., respectfully represents:

1. He is the duly appointed guardian ad litem for
Dorothy B. R. Stewart, a mentally incompetent person,
and for William Donner Denckla, an infant.

2. As such guardian ad litem, he participated fully in
the litigation in the Court below, the Court of Chancery.

3. As such guardian, he is an appellee in this Court in
the above captioned cause.

4. In the proceedings below, he took the same position as to the issues as did the appellants in this Court.

5. In the appeal proceedings in this Court, he will take the same position as he did below, and as the appellants did below.

6. He desires to join the said appellants in the preparation of and filing of briefs because both are in accord in their respective positions as to the issues involved.

[fol. 206] Wherefore, Robert B. Walls, Jr., guardian ad litem, moves that he be given leave to join the appellants herein in filing briefs in this Court.

Robert B. Walls, Jr., Guardian ad litem for Dorothy B. R. Stewart and William Donner Denckla, 500 Industrial Trust Building, Wilmington, Delaware.

April 11th, 1956

Leave granted:

Daniel F. Wolcott, J.

[fol. 208] [File endorsement omitted]

[fol. 209] IN THE SUPREME COURT OF THE
STATE OF DELAWARE

[Title omitted]

ORDER ASSIGNING ASSOCIATE JUDGE CALEB R. LAYTON, III,
ETC.—August 20, 1956

And Now, to wit, this twentieth day of August, 1956, Chief Justice C. A. Southerland having disqualified himself in the above entitled cause;

It Is Ordered that Associate Judge Caleb R. Layton, III, is hereby assigned temporarily to fill up the number of the Court to three Justices.

Daniel F. Wolcott, J.

[File endorsement omitted]

[fol. 210] IN THE SUPREME COURT OF THE
STATE OF DELAWARE

[Title omitted]

ORDER RESCINDING THE ASSIGNMENT OF JUDGE CALEB R.
LAYTON, III AND NAMING JUDGE JAMES B. CAREY, ETC.—
September 4, 1956

And Now, to-wit, this 4th day of September, 1956, it appearing that Associate Judge Caleb R. Layton, 3rd, who, by order of August 20, 1956, was assigned temporarily to fill up the number of the Court to three Justices, the Chief Justice having disqualified himself in the above cause, and

It Further Appearing that Associate Judge Caleb R. Layton, 3rd, has now disqualified himself by reason of circumstances not realized at the time of the said order of August 20, 1956,

It Is Therefore Ordered As Follows:

1. The order of August 20, 1956 assigning Associate Judge Caleb R. Layton, 3rd, to fill up the number of the Court, be and it hereby is rescinded:

2. Associate Judge James B. Carey is hereby assigned temporarily to fill up the number of the Court to three Justices.

:/s/ Daniel F. Wolcott, J.

[fol. 211] IN THE SUPREME COURT OF THE
STATE OF DELAWARE

[Title omitted]

MOTION TO REMAND—Filed November 9, 1956

Come Now, Dora Stewart Lewis, Mary Washington Stewart Borie and Paula Browning Denckla, by their attorneys, Arthur G. Logan and Aubrey B. Lank, and Move the Court to remand the above cause to the Court of

Chancery of the State of Delaware in and for New Castle County, and as grounds therefore respectfully represent:

1. On September 19, 1956, the Supreme Court of the State of Florida, in a certain action entitled "Elizabeth Donner-Hanson, individually and as Executrix, et al., Appellants, vs. Katherine N. R. Denckla, individually, et al., Appellees", case number 27622, directed the reversal in part of a Summary Final Decree of the Circuit Court of the Fifteenth Judicial Circuit of Florida in and for Palm Beach County, in Chancery, dated January 14, 1955, in a certain action entitled "Katherine N. R. Denckla, etc., et al., Plaintiffs, vs. Wilmington Trust Company, a Delaware corporation, et al., Defendants", known as case number 31980, referred to in the Opinion of the court below, which reversal was with respect to the jurisdiction of the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County, over certain non-appearing defendants in said action including Wilmington Trust Company, a corporation of the State of Delaware, and Delaware Trust Company, a corporation of the State of Delaware, parties hereto. A copy of the opinion of the Supreme Court of Florida so holding is annexed hereto and incorporated herein by reference.

2. The Honorable Daniel L. Herrmann, acting Vice-Chancellor, did not have before him at the time of the entry of the Judgment in this cause, dated January 13, 1956, the opinion of the Supreme Court of the State of Florida.

3. Had the Supreme Court of the State of Florida acted prior to the Judgment dated January 13, 1956, your petitioners verily believe that the Judgment of the Honorable Daniel L. Herrmann, acting Vice-Chancellor, on the question of res judicata or collateral estoppel, would have been in favor of the appellants since he would have had to hold that all of the necessary parties hereto had been subject to the jurisdiction of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, under the full faith and credit clause of the Constitution of the United States.

Wherefore, your petitioners pray that this action be remanded to the Court of Chancery of the State of Delaware in and for New Castle County with instructions to open the judgment dated January 13, 1956, and give full faith and credit to the final decision of the Supreme Court of the State of Florida and to hold that the appellees are estopped by the decision of the Supreme Court of the State of Florida from relitigating the issues decided by that Court; and for such other relief as this Honorable Court deems meet and just.

Arthur G. Logan, Aubrey B. Lank, Attorneys for
Petitioners, Appellants Dora Stewart Lewis, Mary
Washington Stewart Borie and Paula Browning
Denckla, 400 Continental American Bldg., Wil-
mington, Delaware.

[fol. 214]

ATTACHMENT TO MOTION

IN THE SUPREME COURT OF FLORIDA
JUNE TERM, A. D. 1956, SPECIAL DIVISION A.

Case No. 27,622

ELIZABETH DONNER HANSON, individually and as executrix,
et al., Appellants,

v.

KATHERINE N. R. DENCKLA, individually, et al., Appellees.

Opinion filed September 19, 1956.

An Appeal from the Circuit Court for Palm Beach County,
C. E. Chillingworth, Judge.

Caldwell, Pacetti, Robinson & Foster and Manley P. Cald-
well for Elizabeth Don-er Hanson, Individually, as Execu-
trix of the Will of Dora Browning Donner, Deceased, as
Guardian Ad Litem for Joseph Donner Winsor and Donner
Hanson. and William Donner Roosevelt, Individually; Mc-

Carthy, Lane & Adams, Edward McCarthy and William H. Foulk (Wilmington, Delaware) for Elizabeth Donner Hanson as Guardian Ad Litem for Joseph Donner Winsor and Donner Hanson, Appellants.

C. Robert Burns and Redfearn & Ferrell, for Appellees.

HOBSON, J.:

This is an appeal by defendants from a summary final decree holding that assets of a trust created by Dora Donner during her lifetime passed under her will. Cross-assignments of error have been filed by the plaintiffs, who contend that the chancellor erred in holding that he had no jurisdiction over some of the defendants, the trustee and certain beneficiaries under the trust, who did not answer the complaint.

The essential facts of the case are not in dispute. Dora Donner died in Palm Beach, Florida, on November 20, 1952, leaving a will dated December 3, 1949, which was probated in Palm Beach County. She was formerly a citizen of Pennsylvania, but made her permanent home in Palm Beach County on or about January 15, 1944, and remained domiciled in Florida until she died:

[fol. 215] On March 25, 1935, the testatrix executed a trust instrument in which she named the Wilmington Trust Company, a Delaware corporation, as trustee. The trust instrument provided in part as follows:

"Trustee shall pay over the net income of the trust fund unto Trustor, for and during the term of her natural life. Upon the death of Trustor Trustee shall assign, transfer, convey and deliver this trust fund, principal and undistributed income thereof, if any, free from this trust, unto such person or persons and in such manner and amounts and upon such trusts, terms and conditions as Trustor shall have appointed by the last instrument in writing which she shall have executed and delivered to Trustee, or failing such instrument, by her last Will and Testament, or in default of any such appointment then unto the then living issue of Trustor, per stirpes and not per capita."

The trust assets consisted entirely of intangible personalty.

On April 6, 1935, Mrs. Donner executed a power of appointment under the terms of the trust. On October 11, 1939, she executed a new power of appointment, amending the previous power.

On December 3, 1949 (the same day she executed her will, and while domiciled in Florida), Mrs. Donner executed an instrument entitled "Donner * First Power of Appointment" wherein she revoked all previous exercises of the power of appointment under the trust and ordered that certain sums be paid to a different set of beneficiaries.

On July 7, 1950, she executed an instrument entitled "Donner * Second Power of Appointment" amending the instrument of December 3, 1949. This was the last "power of appointment" the testatrix exercised before her death.

In her will, after making certain specific directions and bequests, the testatrix provided in part as follows:

[fol. 216] "FIFTH: All the rest, residue and remainder of my estate, real personal and mixed, whatsoever and wheresoever the same may be at the time of my death, *including any and all property, rights and interest over which I may have power of appointment which prior to my death has not been effectively exercised by me or has been exercised by me in favor of my Executrix, I direct my Executrix to deal with as follows, namely:—*"

[Here follow certain directions and the names of residuary legatees, plaintiff-appellees here.] (*Italics supplied.*)

The complaint for declaratory decree in this case was filed for the purpose of determining what passes under the residuary clause of the will quoted above. This determination, of course, requires a study of the trust agreement of March 25, 1935, and the powers of appointment exercised thereunder, to determine whether or not such powers as the testatrix had were "effectively exercised" under the terms of the will. On this issue, the chancellor held in part:

"Concerning the declaration of trust dated March 25, 1935, and particularly the power of appointment dated December 3, 1949, no present interest passed to any beneficiary other than the Trustor (Testatrix). It seems clear to me, from the authorities, that the power of appointment was testamentary in character and did not constitute a valid inter vivos trust appointment. As the appointment had only one subscribing witness, rather than two, as required in Florida, it did not constitute a valid testamentary disposition. Hence, the executrix should receive the assets and dispose of them agreeable to the will under which she was appointed."

[fol. 217] After this final decree was entered, a suit which had been brought in Delaware by Elizabeth Donner Hanson, as executrix and trustee under the Donner will (one of the appellants herein) to determine the validity of the trust agreement resulted in a summary judgment of the Court of Chancery of the State of Delaware in and for New Castle County, holding that the trust was valid. An appeal from this judgment is pending in Delaware but, so far as the record here before us shows, has not yet been determined.

Appellants have lodged with us a copy of the Delaware chancellor's opinion and judgment and, on the basis thereof, have moved to remand the instant case with directions to dismiss it, taking the position that the Delaware judgment is dispositive of the main issue raised on this appeal.

We shall first consider the contention of appellants that the circuit court of Palm Beach County erred in holding the trust and the powers of appointment exercised thereunder invalid as testamentary in character. As a preliminary inquiry, it is necessary to determine whether or not jurisdiction existed in the courts of Florida to pass upon the validity of these instruments.

There can be no doubt that the court below possessed substantive jurisdiction to determine this issue. Jurisdiction existed by virtue of the will, which had been duly probated in Florida, the testatrix' domiciliary state. Reference having been made in the will, as we have seen, to

powers of appointment, and the question of effective exercise thereof having been properly raised, the chancellor below had no alternative but to examine the trust instrument and documents executed thereunder and declare them valid or invalid. This is to be distinguished from a case wherein questions of administration or validity of a purported inter vivos trust arise absent a will or any reference therein. Cf. *Wilmington Trust Co. v. Wilmington Trust Co.*, Del., 24 A. 2d 309, wherein the settlor had executed a will "making no reference whatever to the power of appointment conferred on him by the [previously executed] trust agreement . . ." and it was held that the Delaware courts had jurisdiction to determine the validity of [fol. 218] trust powers, although the settlor died a domiciliary of another state. In the case now presented, it would have been an abdication or abandonment of jurisdiction, which we would have been obliged to correct, if the chancellor below had failed to answer the question which was duly brought before him for adjudication.

The next question is the source of the applicable law to test the validity of the attempted trust disposition. The trustee, Wilmington Trust Company, is a Delaware corporation with its principal place of business in Delaware. Securities representing the intangible personalty which forms the corpus of the trust are also located in Delaware. The settlor was domiciled in Pennsylvania when she executed the original trust instrument. The first two "powers of appointment", now revoked, were executed while the settlor was domiciled in Pennsylvania. But these considerations alone are insufficient to persuade us that the law of either Delaware or Pennsylvania is applicable, for reasons which will hereinafter appear.

Assuming, for the moment, that this was an inter vivos trust, the only exercises of the power of appointment which could have been intended to create an interest to be enjoyed at the settlor's death were those reflected in the documents of 1949 and 1950. The settlor obviously intended these documents, if any, to make the controlling disposition, for she revoked all previous exercises of the power and even called the 1949 and 1950 papers the "first" and "second" power of appointment respectively, although she

had previously executed similar instruments. The chancellor in Delaware, in expressing his opinion that the trust was valid under Delaware law, sanctioned payment to the remaindermen named in these last two powers of appointment. In the last analysis we, too, are concerned with the interests of these remaindermen in our inquiry as to whether or not the instruments which created their interests were effective to shift the trust property out of the estate of the testatrix. We do not question the validity of the beneficial life estate reserved by the settlor.

[fol. 219] It is urged upon us that the remaindermen possessed during the life of the settlor a present right of future enjoyment of the trust property. In making this argument, appellants state in part in their brief that:

... since the right to amend is specifically reserved in the Trust Agreement of March 25, 1935, *each appointment should be construed as an amendment to and a republication of the original agreement*. Therefore, the trust agreement and appointments thereunder must always be construed together." (Italics supplied.)

In *Henderson v. Usher*, 118 Fla. 688, 160 So. 9, we observed that an inter vivos trust usually has its situs at the residence of the creator of the trust, and we were considerably influenced in our consideration of this principle by the case of *Swetland v. Swetland*, 105 N. J. Eq. 608, 149 A. 50; *Id.*, 107 N. J. Eq. 504, 153 A. 907, which we viewed as "one of the leading cases in this country on the question". In the *Swetland* case the settlor had amended the trust, but had been domiciled in New Jersey both at the time of his execution of the original trust agreement and the amendment thereto. It was held that New Jersey law applied to test both agreements. The court in the *Swetland* case rejected the contention that the applicable law as to the trust necessarily followed the settlor wherever he might be domiciled after the trust was executed, and it is unnecessary for us to express any opinion regarding this principle. It is sufficient to observe that in the instant case the last effective acts, if any there were, of the settlor to establish remainder interests under the trust were accomplished while she was a Florida domiciliary, and we

consider the last powers of appointment as a republication of the original trust instrument, or as if the trust instrument had been executed while the settlor was domiciled in Florida. We consider this a far more realistic interpretation of these instruments than if we were to rule that the last powers of appointment should be construed to relate back to the date upon which the original [fol. 220] trust agreement was executed, because the effect of a "relation-back" view would be to establish an artificially early date for interests which were obviously not intended to be created by the settlor until much later. Hence we must consider the validity of the trust, and the remainder interests it sought to create, under Florida law, *Henderson v. Usher*, supra, 118 Fla. 688, 160 So. 9. Compare the rule sustaining the power of the domiciliary state to tax, and apply its tax law to, the exercise of a power to dispose of intangibles, although the trust fund and trustee are outside the state. *Graves v. Schmidlapp*, 315 U. S. 657, 86 L. Ed. 1097; *Bullen v. Wisconsin*, 240 U. S. 625, 60 L. Ed. 830.

The logic of the foregoing analysis is strongly buttressed in the instant case by the fact that the settlor chose, after she had come to Florida, which was to be her last domicile, to make an integrated pattern of arrangements for the disposition of her property. At this period of her life she desired to make final exercise of whatever powers she might have had under the earlier arrangement but was careful to provide in her will for the possible ineffectiveness of such exercise of power, making an unquestionably valid testamentary disposition to settle her entire estate if the doubtful powers of appointment failed.

Having decided that Florida law applies, we are next obliged to apply it. The validity of an attempted inter vivos trust such as this is a matter of first impression in this state. The trust instrument provided, as we have seen, that the settlor would receive all of the net income for life. The settlor reserved to herself the right to amend or revoke the trust agreement in whole or in part at any time. Many powers of the trustee could ordinarily be exercised by it only upon the written direction of, or with the written consent of, the "adviser" of the trust. These powers were the following:

“(b) To sell at public or private sale, exchange for like or unlike property, convey, lease for terms longer or shorter than the trust, and otherwise dispose [fol. 221] of any or all property, real or personal, held in the trust fund, for such price and upon such terms and credits as Trustee may deem proper.

“(c) To invest the proceeds of any such sale or sales, and any other money available for investment, in such stocks, bonds, notes, securities and/or other income producing property as may be deemed appropriate for this trust fund, irrespective of the rules of investment applying to trustees under any present or future laws of the State of Delaware or elsewhere.

* * * * *

“(e) To participate in any plan or proceeding for protecting or enforcing any right, obligation or interest arising from any stock, bond, note or security held in the trust fund, or for reorganizing, consolidating, merging or adjusting the finances of any corporation issuing the same, to accept in lieu thereof any new or substituted stocks, bonds and/or securities, to pay any assessment or any expense incident thereto, and to do any other act or thing that Trustee may deem necessary or advisable in connection therewith.”

As “advisor” the settlor named her husband or “such other person or persons as trustor may nominate in writing delivered to trustee during her lifetime”. Finally, and very significantly, the settlor reserved to herself the power of appointment, which we have discussed above, with a view to naming beneficiaries to take remainder interests in the trust after her death.

Although any of these reservations of power in the settlor, standing alone, might not have been enough to render the trust invalid (cf. *Williams v. Collier*, 120 Fla. 248, 162 So. 868, wherein we upheld a revocable trust reserving a life interest to the settlor, with remainder payable to named grandchildren) the cumulative effect of [fol. 222] the reservations was such that the relationship established divested the settlor of virtually none of her

day-to-day control over the property or the power to dispose of it on her death, and the trust was illusory. See *Burns v. Turnbull*, 294 N. Y. 889, 62 N. E. 2d 785; *In re Tunnell's Estate*, 325 Pa. 554, 190 A. 906; *In re Shapley*, 353 Pa. 499, 46 A. 2d 227; *Hurley's Estate*, 17 Pa. D. & C. 637; *Warsco v. Oshkosh Savings & Trust Co.*, 183 Wis. 156, 196 N. W. 829; *Steinke v. Sztanka*, 364 Ill. 334, 4 N. E. 2d 472. In Scott, Trusts and the Statute of Wills, 43 Harv. L. R. 521, 529, the author states:

"Suppose that the settlor reserves not merely a life interest and a power to revoke the trust in whole or in part and to modify the trust, but reserves also a power to control the trustee in the administration of the trust. In such a case, there is authority to the effect that the trust is in substance testamentary and is invalid unless declared in an instrument executed in accordance with the requirements of the Statute of Wills."

Another common principle is reflected in Restatement of Trusts, Sec. 56, which reads as follows:

"Where the owner of property purports to create a trust inter vivos but no interest passes to the beneficiary before the death of the settlor, the intended trust is a testamentary trust and is invalid unless the requirements of the statutes relating to the validity of wills are complied with."

Appellants contend that Illustration 8 under Subsection g. of this section is "exactly our case". This illustration reads as follows:

"8. A transfers certain securities to B in trust to pay the income to A for life and upon A's death to convey the securities to such person as may be designated in a letter to be delivered by A to B on the following [fol. 223] day. On the following day A delivers a letter to B designating C as the person entitled to receive the securities on A's death. A valid trust for C is created, since an interest passes to C during the life of A."

The above illustration represents the instant trust in some particulars, but is an oversimplification of the facts be-

fore us. It relates to a single exercise of a power of appointment, rather than frequently revoked and amended exercises of power, such as appear in the case before us, which would demonstrate that the settlor considered the appointments to be ambulatory in nature and exactly like successive wills or codicils in their operation. The illustration given, moreover, does not consider the element of control, which we have discussed above. This is treated in Sec. 57 of the Restatement, Subsection g. of which reads in part as follows:

"If the settlor reserves a beneficial life estate and power to revoke or modify the trust and such power to control the trustee as to the details of the administration of the trust that the trustee is his agent, the intended disposition so far as it is intended to take effect after his death is invalid unless the requirements of the Statute of Wills are complied with, but the intended trust is valid so far as the beneficial life estate of the settlor is concerned."

Illustration 5 reads as follows:

"5. A, the owner of shares of stock, delivers the certificates to the B Trust Company to hold and deal with as custodian, to receive the income and pay it over to A, and with power to sell the shares and to reinvest the proceeds. In order to carry out these purposes the shares are registered in the name of the trust company. A writes a letter to the trust company directing it to convey the shares on A's death to C, [fol. 224] unless A should otherwise direct. A dies. The intended disposition in favor of C is testamentary, and C is not entitled to the shares unless the requirements of the Statute of Wills are complied with."

True it is that in the situation posed in Illustration 5 the action taken by A, the settlor, is somewhat less formal than the action taken by the settlor herein, and while this is a circumstance which would tend to uphold the validity of the instant trust, we do not consider it controlling when weighed against the multiple reservations of power we have discussed.

We reemphasize that we do not, and need not, hold that the reservation of the power of appointment, or any other

factor standing alone, would suffice to invalidate the remainder interests sought to be created under this trust. It is enough to observe that if, as to the remaindermen, this trust is not invalid as an agency agreement, and testamentary as the court below found, it is difficult to understand what further control could be retained by a settlor to produce this result, and the principles to which we have alluded above would lose their meaning. We have been shown no error in the chancellor's ruling on this aspect of the case, which accordingly must be affirmed.

We next consider the contention made on the cross-appeal that the chancellor erred in ruling that he lacked jurisdiction over the persons of certain absent defendants, summoned to appear by constructive service of process. These defendants were the trustee and persons who would benefit under the last power of appointment executed under the trust, and against the will. In *Henderson v. Usher*, supra, 160 So. 9, we upheld constructive service of a citizen of New York, although the trust "res", consisting entirely of intangible personalty, was physically located in New York, and the trust was administered there by the Chase National Bank of New York, as trustee. We held that constructive service was valid in that state of the record because substantive jurisdiction existed in the Florida court by virtue of construction of a will, which was also involved, the testator having been domiciled in Florida. We observed that it was not essential that the [fol. 225] assets of the trust be physically in this state in order that constructive service be binding upon a non-resident where the problem presented to the court was to adjudicate, inter alia, the status of the securities incorporated in the trust estate and the rights of the non-resident therein. It is entirely consistent with the *Henderson* case to hold, as we do, that the court below erred in ruling that it lacked jurisdiction over the persons of the absent defendants. With this view of the case, we need not consider the contention of cross-appellees that the absent defendants are necessary parties under *Martinez v. Balbin*, Fla., 76 So. 2d 488.

Finally, we mention again the motion to remand on the basis of the decree of the Delaware court. Since we hold that we have jurisdiction of the matter presented, and that

Florida law is exclusively applicable thereto, this motion must be denied.

Affirmed in part; reversed in part.

Terrell, Acting Chief Justice, Thornal and O'Connell, JJ.,
Concur.

[fol. 226] IN THE SUPREME COURT OF FLORIDA

I, GUYTE P. McCORD, Clerk of the Supreme Court of Florida, do hereby certify that the above attached and twelve foregoing pages is a true and correct copy of the Opinion and Judgment of the Supreme Court of Florida in that certain cause recently pending in said Court wherein Elizabeth Donner Hanson, individually and as executrix, et al., were appellants, and Katherine N. R. Denckla, individually, et al., were appellees, which was filed in said Court on September 19th, 1956, all as the same appears among the records and files of my said office. This Opinion and Judgment will not become final until after fifteen days from the date of filing said Opinion as aforesaid and if a petition for rehearing is filed within said fifteen-day period it will not become final until the petition for rehearing is acted on and disposed of.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the Supreme Court of Florida, at Tallahassee, the capital, on this the 21st day of September, A. D. 1956.

Guyte P. McCord, Clerk of the Supreme Court of Florida.

[fol. 227] IN THE SUPREME COURT OF THE
STATE OF DELAWARE

[Title omitted]

STIPULATION PERTAINING TO REMAND AND ORDER THEREON—
November 13, 1956

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, subject to the approval of the Court, that:

1. The certified copy of the opinion filed September 19, 1956 in the Supreme Court of Florida, which is attached to the motion to remand of Dora Stewart Lewis, et al., filed herein shall be deemed to have been admitted in evidence in the Court of Chancery of the State of Delaware in and for New Castle County upon proffert thereof by Dora Stewart Lewis, et al., as if upon a remand from this Court pursuant to the aforesaid motion, and the opinion shall be deemed to have the same force and effect in this Court as if it had been so admitted in evidence in the Court of Chancery.

2. None of the Appellees, by entering into this stipulation or otherwise, concede the materiality or relevancy of said opinion but each of them expressly reserves the right to challenge the materiality or relevancy thereof in this or in any other Court.

/s/ Arthur G. Logan, Continental American Bldg., Wilmington, Delaware, Attorney for Dora Stewart Lewis, et al.

/s/ C. S. Layton, DuPont Building, Wilmington, Delaware, Attorney for Wilmington Trust Co., Trustee.

/s/ R. B. Walls, Jr., Industrial Trust Building, Wilmington, Delaware, Guardian ad litem for Dorothy B. R. Stewart, et al.

/s/ David F. Anderson, Delaware Trust Building, Wilmington, Delaware, Attorney for Delaware Trust Co., Trustee.

/s/ Edwin D. Steel, Jr., DuPont Building, Wilmington, Delaware, Guardian ad litem for Joseph Donner Winsor, Curtin Winsor, Jr., and Donner Hanson.

So Ordered this 13th day of November, 1956.

/s/ Daniel F. Wolcott, J.

/s/ James B. Carey, J.

/s/ Howard W. Bramhall, J.

[fol. 229] IN THE SUPREME COURT OF THE
STATE OF DELAWARE

[Title omitted]

STIPULATION, PERTAINING TO FLORIDA ORDER DENYING
PETITION FOR REHEARING AND ORDER GRANTING STAY—
December 26, 1956 .

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, subject to the approval of the Court, that:

1. The certified copies of the orders entered by the Supreme Court of Florida on November 28, 1956, in the cause therein pending captioned "Elizabeth Donner Hanson, individually and as executrix, et al., Appellants, vs. Katherine N. R. Denckla, individually, et al., Appellees" denying a petition for rehearing and granting a stay, which are annexed hereto, shall be deemed to have been admitted [fol. 230] in evidence in the Court of Chancery of the State of Delaware in and for New Castle County upon proffert thereof by Dora Stewart Lewis, et al., as if upon a remand from this Court, and such orders shall be deemed to have the same force and effect in this Court as if they had been so admitted in evidence in the Court of Chancery.

2. None of the Appellees, by entering into this stipulation or otherwise, concede the materiality or relevancy of said orders, but each of them expressly reserves the right to challenge the materiality or relevancy thereof in this or in any other Court.

/s/ E. D. Steel, Jr., DuPont Building, Wilmington,
Delaware, Guardian ad litem for Joseph Donner
Winsor, Curtin Winsor, Jr., and Donner Hanson.

/s/ C. S. Layton, DuPont Building, Wilmington,
Delaware, Attorney for Wilmington Trust Co.,
Trustee.

/s/ Robert B. Walls, Jr., Industrial Trust Building,
Wilmington, Delaware, Guardian ad litem for
Dorothy B. R. Stewart, et al.

/s/ David F. Anderson, Delaware Trust Building,
Wilmington, Delaware, Attorney for Delaware
Trust Co., Trustee.

/s/ Arthur G. Logan, Continental American Bldg.,
Wilmington, Delaware, Attorney for Dora Stewart
Lewis, et al.

So Ordered this 26th day of December, 1956.

/s/ Daniel F. Wolcott, J.

/s/ Howard W. Bramhall, J.

/s/ James B. Carey, J.

[fol. 231] ATTACHMENT TO STIPULATION

IN THE SUPREME COURT OF FLORIDA, JUNE TERM, A. D. 1956
WEDNESDAY, NOVEMBER 28, 1956

ELIZABETH DONNER HANSON, individually and as
executrix, et al., Appellants,

—v.—

KATHERINE N. R. DENCKLA, individually, et al., Appellees.

On application of the appellants it is ordered that execution and enforcement of the judgment of this Court rendered herein on September 19th, 1956, petition for rehearing of said cause having this day been denied, be stayed for ninety days from this date to enable the appellants to have a reasonable time in which to apply for and to obtain, if they can, a review of said cause by the Supreme Court of the United States and the mandate of this Court to the trial court be withheld for said ninety-day period and if review is perfected that the mandate be held pending disposition of the cause by the Supreme Court of the United States. This order is subject to cancellation at any time if the appellant fails to prosecute review by the Supreme Court of the United States with reasonable dispatch.

[fol. 232] ATTACHMENT TO STIPULATION

IN THE SUPREME COURT OF FLORIDA, JUNE TERM, A. D. 1956
WEDNESDAY, NOVEMBER 28, 1956

ELIZABETH DONNER HANSON, individually and as
executrix, et al., Appellants,

—v.—

KATHERINE N. R. DENCKLA, individually, et al., Appellees.

The petition for rehearing filed by the appellants in the
above cause has been considered and said petition is denied.

[fol. 233] Clerk's Certificate to foregoing papers omitted
in printing.

[fol. 235] IN THE SUPREME COURT OF THE
STATE OF DELAWARE

No. 8, 1956

DORA STEWART LEWIS, MARY WASHINGTON STEWART BORIE
and PAULA BROWNING DENCKLA, Defendants Below,
Appellants,

v.

ELIZABETH DONNER HANSON, as Executrix and Trustee
under the Last Will of Dora Browning Donner, deceased,
Plaintiff Below, Appellee,

WILMINGTON TRUST COMPANY, a Delaware corporation, as
Trustee under three separate Agreements, (1) and (2)
with William H. Donner dated March 18, 1932 and March
19, 1932, and (3) with Dora Browning Donner dated
March 25, 1935, Defendant Below, Appellee,

DELAWARE TRUST COMPANY, a Delaware corporation, as
Trustee under three separate Agreements (1) with Wil-
liam H. Donner dated August 6, 1940, and (2) and (3)
with Elizabeth Donner Hanson, both dated November
26, 1948, Defendant Below, Appellee,

KATHERINE N. R. DENCKLA, Defendant Below, Appellee,

ROBERT B. WALLS, ESQUIRE, Guardian ad litem for Dorothy B. R. Stewart and William Donner Denckla, Defendant Below, Appellee,

ELWYN L. MIDDLETON, Guardian of the property of Dorothy B. R. Stewart, a mentally ill person, Defendant Below, Appellee,

EDWIN D. STEEL, JR., ESQUIRE, Guardian ad litem for Joseph Donner Winsor, Curtin Winsor, Jr., and Donner Hanson, Defendant Below, Appellee,

BRYN MAWR HOSPITAL, a Pennsylvania corporation, MIRIAM V. MOYER, JAMES SMITH, WALTER HAMILTON, DOROTHY A. DOYLE, RUTH BRENNER and MARY GLACKENS, Defendants Below, Appellees,

LOUISVILLE TRUST COMPANY, a Kentucky corporation, as Trustee for Benedict H. Hanson, and as Trustee under agreements with William H. Donner, Defendant Below, Appellee,

WILLIAM DONNER ROOSEVELT, JOHN STEWART and BENEDICT H. HANSON, Defendants Below, Appellees.

[fol. 236] WOLCOTT and BRAMHALL, Justices, and CAREY, Judge, sitting.

Appeal from a judgment of the Court of Chancery of New Castle County.

Arthur G. Logan and Aubrey B. Lank, of Wilmington, for appellants.

Robert B. Walls, Jr., Guardian *ad litem* for Dorothy B. R. Stewart and William Donner Denckla, appellee *pro se*.

Caleb S. Layton, of Wilmington, for Wilmington Trust Company, appellee.

David F. Anderson, of Wilmington, for Delaware Trust Company, appellee.

Edwin D. Steel, Jr., Guardian *ad litem* for Joseph Donner Winsor, Curtin Winsor, Jr., and Donner Hanson, appellee *pro se*.

OPINION—January 14, 1957

WOLCOTT, J.:

This appeal involves two fundamental questions: (1) Whether a purported *inter vivos* trust and the exercise of

a power of appointment under it are valid or invalid; and (2) Whether the parties may litigate the question of validity in a Delaware court because of an adverse adjudication upon the point by a Florida court.

The action below, commenced by Elizabeth Donner Hanson [fol. 227] son as the Florida executrix of the settlor's will and, also, in her capacity as trustee under the residuary clause of that will, seeks a declaratory judgment establishing the persons entitled to \$417,000 which was distributed by the *inter vivos* trustee pursuant to the exercise of the power of appointment.

The parties named as defendants in the action include Wilmington Trust Company, trustee under the trust agreement in question and, as such, the distributor of the \$417,000, Delaware Trust Company, trustee, the recipient of \$400,000 of the trust assets, the recipients of the balance of \$17,000, and all possible claimants of the trust corpus, either under the exercise of the power of appointment or under the settlor's Florida will.

The cause came up for decision below on four cross-motions for summary judgment. It will suffice to state that the defendants divide themselves into two contending groups. One group, which we will call the "Lewis Group", maintains that the trust agreement is invalid as an *inter vivos* trust instrument and that, accordingly, the exercise of the power of appointment was testamentary in character and, as such, ineffective under Florida law to pass any interest. The Lewis Group contends that the entire trust [fol. 238] corpus comprises part of the Florida estate of the settlor and passes under her will.

The second group, which we will call the "Hanson Group" maintains that the trust agreement is valid and that, accordingly, the transfer of \$417,000 pursuant to the exercise of the appointment is legally sufficient to pass title. Needless to say, the adoption of the contention of one group will benefit it financially to the loss of the other.

The Acting Vice Chancellor granted summary judgment in favor of the Hanson Group, holding that the trust agreement was a valid *inter vivos* trust; that the exercise of the

¹ Since its institution, she has been enjoined by the Florida court from prosecuting the action. Since that time, neither she nor her counsel has taken any part in the litigation.

power of appointment was effective to pass title to the \$417,000, and that there was no estoppel resulting from the Florida judgment. From this decision the Lewis Group appeals.

The facts are not in dispute. On March 25, 1935, Dora Browning Donner (hereafter Mrs. Donner), then being a resident of Pennsylvania, entered into a trust agreement with Wilmington Trust Company and deposited certain securities with it as the trust corpus. By the terms of the agreement Wilmington Trust Company was directed to manage, invest and reinvest the trust corpus and to pay over the net income to Mrs. Donner for her life who reserved to herself a power of appointment of the corpus exercisable either by instrument or by will. Failing the exercise of the power, the agreement directed that the trust corpus be distributed by the trustee at her death to her issue surviving, or to her next of kin.

[fol. 239] Specific powers were conferred upon Wilmington Trust Company, as trustee, which in substance were the ordinary powers granted to a trustee. However, it was specified that Wilmington Trust Company could exercise certain of the powers "only upon the written direction of, or with the written consent" of a trust advisor. These powers were (1) to sell trust assets, (2) to invest proceeds of sale of trust property, and (3) to participate in mergers and reorganizations of corporations whose securities were held as part of the trust assets.

In the agreement, Mrs. Donner designated a trust advisor and reserved the right to nominate other advisors at any time during her lifetime. She also reserved the right to amend, alter or revoke the agreement in whole or in part at any time, as well as the right to change from time to time the trustee. On one occasion, she withdrew \$75,000 from the trust corpus, which sum she later replaced.

On two different occasions prior to 1949, Mrs. Donner executed instruments exercising the power of appointment. Finally, on December 3, 1949,² by a non-testamentary instrument, she exercised the power of appointment, specifically revoking the earlier exercises by her of the power, and directing the Wilmington Trust Company, six months after her death, to pay over a total of \$17,000 to Bryn Mawr

² Later amended in a minor aspect.

[fol. 240] Hospital and certain family retainers, \$200,000 to Delaware Trust Company in trust for Joseph Donner Winsor, \$200,000 to Delaware Trust Company in trust for Donner Hanson, and the residue of the corpus to the executrix of her will.

In 1944, Mrs. Donner changed her residence from Pennsylvania to Palm Beach County, Florida where she was domiciled at her death in 1952. Her will was probated in Florida and Elizabeth Donner Hanson duly qualified as executrix. The residuary clause of her will directed her executrix to pay from the residuary estate, which specifically included the balance of the trust corpus not appointed in her lifetime, all death taxes on property appointed from the trust corpus during her lifetime, and to divide the balance remaining into two equal parts, one part to be transferred to Delaware Trust Company in trust for Katherine N. R. Denckla, a daughter; and the other part to be transferred to Elizabeth Donner Hanson in trust for Dorothy B. R. Stewart, another daughter, for her life, and upon her death to Delaware Trust Company in trust for Katherine Denckla.

At the death of Mrs. Donner the trust corpus held by Wilmington Trust Company amounted to in excess of \$1,490,000. Thereafter, pursuant to the directions contained in the exercise of the power of appointment Wilmington Trust Company distributed assets in the aggregate amount of \$417,000 and transferred a portion of the balance of the corpus to the executrix of the will of Mrs. Donner.

[fol. 241] In January, 1954 the two residuary beneficiaries under the will of Mrs. Donner³ brought an action for declaratory judgment in Palm Beach County, Florida against Mrs. Hanson, individually and as executrix, Wilmington Trust Company, Delaware Trust Company, and some of the other possible claimants to the assets passing under the residuary clause of the will of Mrs. Donner.⁴ In his action a judgment was sought determining what prop-

³ Katherine Denckla appeared in her own person. Dorothy Stewart appeared by a guardian.

⁴ Some of the family retainers, the recipients of a total of \$3,000.00 from the distribution pursuant to the exercise of the power of appointment, were not named as parties.

erty passed under the will of Mrs. Donner, and the authority of the executrix over the assets held by Wilmington Trust Company under the 1935 agreement.

Neither Wilmington Trust Company nor Delaware Trust Company were served personally in the Florida action, nor did either of them appear. None of the trust assets held by Wilmington Trust Company has ever been held or administered in Florida, nor has Wilmington Trust Company ever done business in the State of Florida.

On January 14, 1955 the Circuit Court of Palm Beach County, Florida entered a decree⁵ holding that it lacked [fol. 242] jurisdiction over the trust assets in Delaware and over Wilmington Trust Company, Delaware Trust Company and the other non-answering defendants, and directed that the complaint be dismissed without prejudice as to all of them. It was also held that no present interest passed to any beneficiary other than Mrs. Donner under the agreement of 1935 and that the exercise of the power of appointment by her was testamentary in character and, as such, invalid under Florida law because it was not subscribed by two witnesses. It was held, therefore, that the assets held by Wilmington Trust Company passed under the will of Mrs. Donner, and that the distribution thereof was to be made in accordance with the residuary clause.

Thereafter, an appeal was taken to the Supreme Court of Florida by the equivalent of the Hanson Group seeking a reversal of the holding of invalidity of the 1935 trust and the exercise of the power of appointment. Similarly, the equivalent of the Lewis Group by cross-appeal sought a reversal of the holding of lack of jurisdiction over Wilmington Trust Company and Delaware Trust Company.

The Supreme Court of Florida handed down its opinion (not yet reported) affirming that portion of the decree adjudging the invalidity of the trust and the exercise of the power of appointment, and reversing that portion of the decree holding that Florida had no jurisdiction over Wilmington Trust Company and Delaware Trust Company.

[fol. 243] In the interim, while the appeal was pending in Florida, the Lewis Group perfected its appeal in this court

⁵ The Florida decree was entered after the instituting of suit in Delaware by the executrix.

from the judgment of the Acting Vice Chancellor and argued it before us.

In the argument and on the briefs, the main emphasis was placed by the Lewis Group upon the estopping effect of the Florida judgment. In deciding this appeal, however, we think a more logical approach to what has now become a headlong jurisdictional collision between states is to consider first the question of what law governs the basic validity of the trust agreement and the exercise of the power of appointment, and whether or not under the applicable law the instruments are legally effective as such. We therefore take up first the question of essential validity of the trust and the exercise of the power of appointment.

There is no dispute concerning the pertinent facts. Wilmington Trust Company at all times has done business in Delaware. The trust agreement was executed in Delaware. The assets comprising the trust corpus were delivered to Wilmington Trust Company and retained by it in Delaware. The trust was administered wholly within Delaware. At the time the agreement was executed, Mrs. Donner was a resident of Pennsylvania.

In determining the situs of a trust for the purpose of deciding what law is applicable to determine its validity, the most important facts to be considered are the intention [fol. 244] of the creator of the trust, the domicile of the trustee, and the place in which the trust is administered. *Wilmington Trust Co. v. Wilmington Trust Co.*, 26 Del. Ch. 396, 24 A. 2d 309; *Wilmington Trust Co. v. Sloane*, 30 Del. Ch. 103, 54 A. 2d 544; *Annotation* 89 A.L.R. 1033.

Generally speaking, a creator of an *inter vivos* trust has some right of choice in the selection of the jurisdiction, the law of which will govern the administration of the trust. *Wilmington Trust Co. v. Wilmington Trust Co.*, *supra*. This trust agreement was signed and the securities delivered to a trustee doing business in Delaware. We think that this circumstance clearly indicates the intent of Mrs. Donner to have the trust administered and governed according to the law of Delaware. 1 *Beale, The Conflict of Laws*, 599.

Formerly, some courts emphasized the domicile of the settlor in deciding what law governed, but the more recent trend of decisions has placed considerably more emphasis on the location of the trust property and its place of ad-

ministration. *Land, Trust in the Conflict of Laws*, §23; 1A *Bogert, Trusts and Trustees*, §211, p. 327; *Restatement, Conflict of Laws*, §294(2). The manifest intention of Mrs. Donner to create a Delaware trust with a Delaware trustee, the deposit of the trust assets in Delaware, and the administration of the trust in Delaware, make it clear that the situs of the trust created by the agreement of 1935 is [fol. 245] Delaware, and that, therefore, its law determines its validity.

Not only is it the rule that the essential validity of an inter vivos trust having its situs in Delaware is governed by its law, but it is equally the rule that the validity of the exercise of a power of appointment reserved in such a trust agreement is to be determined in accordance with Delaware law. *Wilmington Trust Co. v. Wilmington Trust Co.*, supra; *Equitable Trust Co. v. Snader*, 17 Del. Ch. 203, 151 A. 712; *Land, Trusts in the Conflict of Laws*, §24. This is so because the appointments made by the exercise of the power are regarded in law as though they had been embodied in the original trust instrument, and as such as having been created by it. *Wilmington Trust Co. v. Wilmington Trust Co.*, supra.

We, therefore, hold that the law of Delaware determines the essential validity of this trust agreement and of the exercise of the power of appointment.

We now reach the question of whether or not this particular trust instrument and the exercise of the power reserved in it are valid under Delaware law.

The Lewis Group first argues that the agreement of 1935 created no present interest in remainder, either vested or contingent, in anyone prior to the death of Mrs. Donner, and that, therefore, it was a testamentary disposition and, as such, invalid for failure to comply with the Florida statutes concerning wills. In support of the argument are cited 3 *Scott on Trusts*, §330.4; 1 *Bogert on Trusts and Trustees*, [fol. 246] §103; and *Restatement, Trusts*, §56. We recognize the rule but we think that it does not apply to the trust created by Mrs. Donner in 1935.

By that agreement Mrs. Donner reserved a life interest to herself, and directed that upon her death the corpus should be distributed as directed by the exercise of a reserved power of appointment. In the event she should die

without having exercised the power it was directed that the corpus should be distributed to her then living issue, *per stirpes*, and in default of living issue, to her next of kin.

We think that a present interest in remainder came into existence with the creation of the trust in 1935. That remainder interest was lodged in Mrs. Donner's issue upon condition they survived her. By the same token, Mrs. Donner's next of kin had an interest in remainder conditioned upon Mrs. Donner dying without leaving surviving issue. It is true that both of these remainder interests—whether vested or contingent makes no difference—were subject to defeasance by the exercise of the reserved power of appointment. That, however, does not mean that they were not present interests created in 1935. *Gray, The Rule Against Perpetuities*, (4th Ed.), §112(3); *Restatement, Property, Future Interests*, §157, comment R. Furthermore, the exercise of the power of appointment by Mrs. Donner by instrument in her lifetime created present interests in the beneficiaries of the appointment, and under the rule of *Wilmington Trust Co. v. Wilmington Trust Co.*, [fol. 247] *supra*, those interests are regarded in law as having been embodied in the agreement of 1935. Accordingly, we are of the opinion that the trust is not testamentary in character for failure to create present interests in persons other than the settlor at the time it was created.

The Lewis Group next points to certain provisions of the trust agreement and contends that the effect of them is to destroy it as an effective *inter vivos* deed of trust. These provisions are: (1) The reservation by Mrs. Donner of all of the net income from the trust for her life; (2) The reservation by Mrs. Donner of the right to amend or revoke the trust agreement in whole or in part; (3) The reservation by Mrs. Donner of the right to change the trustee under the trust; (4) The reservation by Mrs. Donner of the right to designate and to change an investment advisor to the trustee; (5) The limitation placed upon the trustee to the effect that certain powers could be exercised only with the consent of or at the direction of the trust advisor, and (6) The reservation by Mrs. Donner of the power to appoint the trust corpus either by *inter vivos* instrument in writing, or by last will and testament.

The Lewis Group contends that cumulatively the above

recited provisions have the legal effect of creating an agency relationship between Mrs. Donner and Wilmington Trust Company. It is, therefore, argued that since the relationship was one of agency, the disposition of the trust corpus by Mrs. Donner through the purported exercise of her re-[fol. 248] served power of appointment was testamentary in character, and, as such, invalid under the law of Florida in which state she had died domiciled.

The Lewis Group cites authorities to the effect that if a settlor retains large powers of control over trust property and a power to change the ultimate beneficiaries of the trust to such an extent that the trust is made as ambulatory as a will, under some circumstances it will not be sustained as a trust, upon the theory that it is a disguised attempt by the settlor to make a revocable disposition of property to take effect after death. The question comes down to whether or not the combined effect of the reserved powers is such as to leave the settlor virtually the owner of the property and the trustee a mere agent. See *Annotation*, 32 ALR (2) 1270.

In Delaware it has long been the law that the reservation of a life interest in trust income coupled with a power to revoke the trust and to dispose of the trust corpus by testamentary appointment will not make the trust testamentary in character. *Equitable Trust v. Paschall*, 13 Del. Ch. 87, 115 A. 356. Nor will the reservation of a power to change the trustee at the option of the settlor make it testamentary. *Wilmington Trust Co. v. Wilmington Trust Co.*, *supra*.⁶ [fol. 249] However, the main thrust of the argument of the Lewis Group is directed to the provisions of the agreement providing for the designation of a trust advisor and the limitations on the power of the trustee to act only with the consent of or at the direction of the advisor.

⁶ This also seems to be the law in most jurisdictions. *United Bldg. & Loan Assn. v. Garrett* (1946, D.C. Ark.), 64 F.Supp. 460; *Rose v. Rose*, 300 Mich. 73, 1 N.W.2d 458; *Cleveland Tr. Co. v. White*, 134 Ohio State 1, 15 N.E.2d 627, 118 ALR 475; *Pickney v. City Bank Farmers Trust Co.*, 292 N.Y.S. 835; *Strause v. First Nat'l Bank of Ky.* (Ky.), 245 S.W.2d 914, 32 ALR 2d 126; *Leahy v. Old Colony Tr. Co.*, 326 Mass. 49, 93 N.E.2d 238, 18 ALR 2d 1006; *City Bank Farmers Tr. Co. v. Charity Organization Society*, 265 N.Y.S. 267; *Parkas v. Williams*, 5 Ill.2d 427, 125 N.E.2d 600; See 1 *Scott on Trusts*, §57.1.

By the agreement, Mrs. Donner reserved the right to change the original advisor named and, in fact, she did so on two separate occasions. The agreement, however, specifically confines the powers of the trust advisor as limitations on the exercise of the trustee's powers to (1) the power to sell trust property; (2) the power to invest the proceeds of any sale of trust property, and (3) the power to participate in any plan of merger or reorganization of any company in which trust proceeds have been invested. With respect to the exercise of all of the other specific powers granted to the trustee the consent of the trust advisor is not required.

If it be assumed that the exercise by the trustee of the above enumerated powers had been conditioned solely upon the consent of Mrs. Donner herself, it is clear that that [fol. 250] limitation would not have made the trust testamentary in character. *Restatement of Trusts*, §57, Comment g; 1 *Scott on Trusts*, §57.2; 1 *Bogert on Trusts and Trustees*, §104; *National Shawmut Bank of Boston v. Joy*, 315 Mass. 457, 53 N.E. 2d 113. It follows logically, therefore, that if Mrs. Donner could have limited the power of the trustee to act only with her consent without making the trust testamentary, the same limitation could have been imposed by requiring the consent of a third party. In point of fact, the *National Shawmut Bank* case was precisely that situation, the power to control the investing of the trust funds having been conferred upon a third person. Furthermore, a trust advisor is a fiduciary, somewhat in the nature of a co-trustee, and is sometimes described as a quasi-trustee. *Gathright v. Gaut*, 276 Ky. 562, 124 S.W.2d 782; *Restatement of Trusts*, §185, Comment c; 2 *Scott on Trusts*, §185. The resulting situation fundamentally is not unlike the appointment of co-trustees whose joint action is required in trust matters.

The agreement of 1935 by its terms reserves no power to Mrs. Donner herself over the control or management of the trust property, except such power as may come from her right to revoke the trust, change the trustee and change the advisor to the trustee. As far as the terms of the agreement itself are concerned, the trustee and the advisor were required to use their independent judgment in reaching decisions relating to the administration of the trust.

[fol. 251] The terms of the agreement, therefore, do not compel the conclusion that Mrs. Donner retained such a measure of control over the management of the trust property that, as a matter of law, the Wilmington Trust Company and the trust advisor named were actually her agents. The entire management of the trust is vested by the terms of the instrument in the trustee and the advisor. We think, therefore, that under the law of Delaware the agreement of 1935 created a valid *inter vivos* trust and not an agency relationship as the Lewis Group contends.

The Lewis Group, however, urges that the history of operation of the trust by Wilmington Trust Company indicates clearly that Wilmington Trust Company was in fact a mere agent. To support this contention, affidavits and depositions were filed upon the theory that the agreement, itself, was ambiguous, and that the history of operation of the trust would be of assistance in resolving the ambiguity.

Such extrinsic evidence is material only in the event of ambiguity in the trust instrument itself. *Restatement of Trusts*, §38. In our opinion, there is no ambiguity in this agreement. On the contrary, we think its provisions are clear with respect to the acts of Wilmington Trust Company which required the consent of the trust advisor. The scheme used in drafting the agreement was to enumerate specific powers granted to Wilmington Trust Company, as trustee. It was then specifically directed that certain, but not all, of [fol. 252] those powers should be exercised by Wilmington Trust Company only with the consent of or at the direction of the advisor of the trust. We think there is nothing ambiguous in this provision and that the requirement of consent of the trust advisor is confined to those specific powers. Consequently, we agree with the Acting Vice Chancellor that the evidence of the history of the trust administration is irrelevant.

In view, however, of the insistence of counsel upon the point, we will consider it, but we point out that in our opinion such consideration is unnecessary, and probably improper in the absence of an ambiguity in the instrument.

Generally speaking, the evidence discloses that Mrs. Donner named successively three different trust advisors, and that in administering the trust Wilmington Trust Company acted almost entirely in accordance with the directions

of the trust advisor. We will assume, as they appear to do, that the affidavits support the contention of the Lewis Group that Wilmington Trust Company in all details of trust administration accepted unhesitatingly the directions of the advisor, and in fact exercised no independent judgment.

We have no doubt, however, that the voluntary giving up by a trustee of its independent functions as trustee to an advisor named in the trust instrument cannot operate to change the fundamental nature of the relationship created [fol. 253] by the agreement. Such a voluntary failure to act as an independent trustee in those fields in which the agreement contemplated such action may be ground at the insistence of a beneficiary to remove the trustee but, certainly, it cannot change the relationship intended to be created by the trustor.

We note, also, that none of the facts supports at all the contention that Mrs. Donner, herself, had a hand in the management of the trust or made any of the decisions with respect to the internal management of the trust. Indeed, as far as the facts indicate, she knew nothing of the manner in which Wilmington Trust Company and the trust advisor were managing the affairs of the trust.

Assuming, therefore, that the evidence was material, a conclusion we expressly disclaim, nevertheless, there is no showing that Mrs. Donner retained any practical control of the management of the trust estate to the extent that the trustee and the trust advisor were thereby created her agents, with the consequence that, in law, the agreement of 1935 and the exercise of the power of appointment created by it were testamentary in character.

Our conclusion, therefore, is that the agreement of 1935 under the law of Delaware created a valid *inter vivos* trust. Under the law of Delaware, also, we think Wilmington Trust Company was required to transfer the trust assets pursuant to the directions contained in Mrs. Donner's exercise of the power of appointment delivered to it prior to her death.

[fol. 254] The Lewis Group cites principally in support of its argument in this respect *In re Pengelly's Estate*, 374 Pa. 358, 97 A. 2d 844. The case, however, is of little aid to them. It was a suit brought by a widow, estranged from

her husband for over forty years, to set aside a purported *inter vivos* trust which excluded her from any share in the husband's assets. The purported trust agreement transferred certain securities in trust and granted the trustee the right to invest trust assets "with the approval of the settlor during his lifetime." By the agreement the settlor reserved the income for life, and disposed of the corpus after his death in a manner to exclude his widow.

The court, in its opinion, states the fact to be that the trust agreement was in effect nothing more than the continuance of an arrangement for the management of the settlor's affairs existing between the trustee and the settlor for a period of seven years prior to the execution of the agreement, and that that arrangement was one of principal and agent. Thus, *Pengelly's Estate* dealt with a purported trust which in reality perpetuated a previously existing principal and agent relationship. This relationship was unchanged and continued to be completely subjected to the actual directions of the settlor in its administration. As we have pointed out, in the case before us, however, Mrs. Donner exercised no actual control whatsoever. The two cases are clearly different.

[fol. 255] We have been furnished a certified copy of the opinion of the Supreme Court of Florida in the litigation between some of the parties to this appeal. Later, we will have occasion to refer to this opinion under the point of collateral estoppel, but in connection with the question now under discussion we regard it merely as an additional authority cited by the Lewis Group.

The Florida Supreme Court held that the law of Florida governed the question of validity of the exercise of the power of appointment, because Mrs. Donner was domiciled in Florida at the time of her death. As we have pointed out, however, the domicile of a settlor is at most a minor factor to be considered in determining the situs of an *inter vivos* trust. As we read the opinion it appears to be the theory of the Florida Court that each exercise of the power of appointment was an amendment and republication of the agreement of 1935, and since no present remainder interest was created either by the agreement, or the exercise of the power, until the death of Mrs. Donner domiciled in

Florida, the validity of those remainder interests was to be tested by Florida law.

With all deference to the highest tribunal of a sister state, we disagree. Such may be the law of Florida but it is certainly not the law of Delaware. As we have pointed out, the exercise of a power of appointment creates immediate interests which in law are as though they had been written into the original instrument. The right to revoke or change [fol. 256] the appointment has merely the effect of making the interests thereby created subject to possible defeasance. Furthermore, we think the Florida Supreme Court, in concluding that no present interests in remainder were created by the agreement of 1935, has overlooked, presumably inadvertently, the gift in remainder to Mrs. Donner's living issue, or next of kin, in default of exercise of the power.

We are also constrained to disagree with the conclusion of the Florida Supreme Court that the agreement of 1935 created an agency relationship. The decision in this respect is based, apparently, solely upon the provisions of the agreement itself, reserving certain powers to Mrs. Donner and requiring in some instances joint action by the trustee and the advisor. As we have pointed out, the reservation of a power to revoke or appoint the corpus of an *inter vivos* trust does not transform the relationship into one of agency. Nor is there anything in the provisions relating to the trust advisor which suggests that the advisor was subject to the dictates of Mrs. Donner. Even the facts concerning the operation of the trust, which we suspect were not before the Florida court, rebut the violent presumption necessary to be made to support the conclusion reached. The opinion of the Florida Supreme Court is not persuasive as an authority.

We think our discussion of the validity of the agreement as an *inter vivos* trust is sufficient answer to other authorities relied upon by the Lewis Group in support of its [fol. 257] contentions under this point.

The second fundamental question is what effect, if any, does the adverse judgment entered in the Florida litigation have upon the right of the Hanson Group to litigate the question of essential validity of the trust of 1935 in Delaware.

The Florida judgment⁷ is an adjudication that by reason of the probate of Mrs. Donner's will, Florida, as the state of domiciliary administration, has substantive jurisdiction to inquire into the validity of the 1935 trust and the exercise of the powers of appointment, references to which were made in the will, and to hold them invalid under Florida law. Upon this point, the Supreme Court of Florida affirmed the trial court's ruling of invalidity. In the cross appeal, which sought a review of the trial court's holding that Florida lacked jurisdiction over the non-appearing defendants (among which were Wilmington Trust Company, Delaware Trust Company),⁸ the Florida Supreme Court reversed the trial court and held that jurisdiction over the trustee under the trust and the beneficiaries of the exercise of the power of appointment could be obtained by constructive service.

[fol. 258] In their answer the Lewis Group pleads the Florida judgment and upon the basis of it asks for certain relief. The first prayer for relief is that Delaware Trust Company be ordered to account for the \$400,000 received by it from the trustee and be directed to transfer it to the executrix of Mrs. Donner's will. The second prayer for relief is, in the event Delaware Trust Company not be ordered to account, that a money judgment be entered against Wilmington Trust Company in the amount of \$417,000 with interest.

With respect to the second prayer for relief, it is obvious that, irrespective of the demand that Delaware Trust Company be ordered to account, the Lewis Group seeks a personal judgment against Wilmington Trust Company from the inclusion in the prayer for a judgment of \$17,000, since Delaware Trust Company has never received this sum.

The Lewis Group, therefore, seeks to use the Florida judgment as the basis for an assertion of personal liability.

⁷ By stipulation of the parties the record has been augmented to include the Florida judgment as finally framed by the Supreme Court of Florida, to all intents and purposes as though it had been pleaded and proven in the court below.

⁸ The recipients of the \$17,000 appointment were not even named as parties *pro forma* in the Florida action.

against Wilmington Trust Company, and as a judgment *in rem* dispositive of the entire trust corpus. The full faith and credit clause of Article IV of the Federal Constitution is invoked.

The demand of full faith and credit for the Florida judgment as the prop for the assertion of personal liability against Wilmington Trust Company is defeated by the fact that Wilmington Trust Company has never been served personally with Florida process, nor has it appeared in any [fol. 259] form in the Florida litigation. The recital of these facts is sufficient to require the denial of full faith and credit to the Florida judgment when it is sought to be made the basis for the assertion of personal liability. *Iowa-Wisconsin Bridge Co. v. Phoenix Corp.*, 2 Terry 527, 25 A. 2d 383, cert. den. 317 U.S. 671. It follows, therefore, that the prayer of the Lewis Group for a money judgment against Wilmington Trust Company was properly denied.

Next, the Lewis Group argues that the Florida judgment is entitled to full faith and credit as a judgment *in rem*. It is, of course, true that the courts of Florida may adjudicate with respect to a *res* within its boundaries and subject to its control, and full faith and credit may be successfully claimed for such a judgment in the courts of other states. *Restatement, Conflict of Laws*, §429. But a judgment which has the force of a judgment *in rem* with respect to assets located in Florida does not acquire by reason of the full faith and credit clause any extra-territorial effect upon assets located outside of the State of Florida in the absence of seizure by the Florida courts. *Riley v. New York Trust Co.*, 315 U.S. 343, 62 S.Ct. 609. To have any extra-territorial effect such a judgment must have been rendered after the acquisition of personal jurisdiction over the party claiming the non-Florida assets. *Baker v. Baker, Eccles & Co.*, 242 U.S. 394, 37 S.Ct. 152.

The *res*, over which these parties are contending, consists [fol. 260] entirely of corporate securities which at all times since 1935 have been located in Delaware. There has been no seizure of them by any judicial process in Florida; nor has any person or corporation holding the assets voluntarily by appearance brought them before the Florida courts.

The Supreme Court of Florida purports to find jurisdiction over this trust *res* by reason of the Florida domicile of Mrs. Donner and the probate thereof of her will. In an action brought to construe that will it rendered a decision "as to whether or not the instruments which created their [remainder] interests were effective to shift the trust property out of the estate of the testatrix." This was done on the theory that the last effective act of Mrs. Donner to establish remainder interests in the trust corpus, i.e., the execution of the power of appointment of 1949, was performed by her while a resident of Florida and amounted to a republication of the trust of 1935; it was held that it was as if the original instrument had been executed while she was domiciled in Florida. As we have pointed out, this result is contrary to the law of Delaware, and also the recent trend of well considered decisions in other states.

The Florida court relies upon *Henderson v. Usher*, 118 Fla. 688, 160 S. 9, but as we read that case it does not support their holding. In the *Henderson* case an action was filed for the construction of the will of a Florida decedent which purported to exercise a power of appointment over [fol. 261] the corpus of an *inter vivos* trust created by a Florida resident in New York with a New York trustee. The donor deposited the securities comprising the trust corpus in New York, and in the instrument gave a power of appointment by will to the life beneficiary, a Florida resident. The will of the Florida donee of the power created an admittedly testamentary trust by the exercise of his power of appointment over the *inter vivos* trust corpus. Thereafter, the trustees of the testamentary trust, non-residents of Florida, instituted suit for the construction of the Florida will so that they might be instructed as to their duties under the will and the testamentary trust.

The precise question in the *Henderson* case was the validity of constructive service upon the widow of the testator, who had remarried and was a resident of New York. Constructive service upon her was upheld upon the ground that the *res* before the court was the Florida will, and the trust established by it, and since the trustees under the will had voluntarily submitted it to the courts of Florida for adjudication, jurisdiction had thereby been

conferred over the testamentary trust. Furthermore, there was no question but that the Florida will had by the exercise of the power created a Florida testamentary trust. In issue was the right of the widow to receive income from the testamentary trust. There was no issue concerning the rights of anyone arising out of the New York *inter vivos* trust.

[fol. 262] The *Henderson* case, therefore, is not authority for the assertion of jurisdiction by Florida over an *inter vivos* trust created and administered in Delaware. The will of Mrs. Donner, contrary to the apparent view of the Florida Supreme Court, did not exercise the reserved power of appointment. That power was exercised in 1949 and a part of the Delaware trust corpus was appointed to her Florida executrix and disposed of by the residuary clause of her will. With respect to this portion of the *inter vivos* trust corpus, it is clear that Florida has jurisdiction since it passes as part of Mrs. Donner's estate; but with respect to the \$417,000 appointed to non-Floridians it is equally clear, not only that Mrs. Donner did not intend it to pass as part of her estate, but that Florida has never had the remotest connection with or power over it.

The Florida Supreme Court cites as further authority for its assumption of jurisdiction over the 1935 trust the case of *Sweetland v. Sweetland*, 105 N.J. Eq. 608, 149 A. 50; aff. 107 N.J. Eq. 504, 153 A. 907. This case, however, is not authority for the assumption of jurisdiction under these circumstances. The *Sweetland* case was a bill for accounting against a non-resident trustee based on the dissipation and misappropriation of the corpus of an *inter vivos* trust created and administered in New York. The complainants sought an injunction against the New Jersey executors of the creator's New Jersey will, which added a large amount [fol. 263] to the original *inter vivos* trust corpus, from paying it over to the trustee, and sequestered the non-resident trustee's interest in the creator's New Jersey estate. Since the assets themselves were in the hands of New Jersey executors and had by sequestration been subjected to the power of the court, it was held that irrespective of the situs of the trust the court could enforce its decree to the extent of the property sequestered. It is plain that the *Sweetland* case is distinguishable.

It follows, therefore, that the Florida judgment is not entitled to full faith and credit as a judgment *in rem* as to the \$417,000 which has never been subjected to the control of the Florida court and, as such, a bar to the action before us.

The Lewis Group next argues that irrespective of full faith and credit, the Florida judgment precludes the litigation of the question of essential validity of the 1935 trust as a matter of *res adjudicata* or, in the alternative, as a matter of collateral estoppel.

The doctrine of *res adjudicata* has no application in the pending action because the essence of the doctrine is that the prior judgment raised as a bar must have been rendered in a prior action between the same parties involving the same cause of action asserted in the second action. *Restatement, Judgments*, §48; *Collateral Estoppel by Judgment*, 56 Harv. L.R. 1. It is obvious that we are dealing here with an entirely different cause of action from that tried in [fol. 264] Florida. In Florida the issue was, what assets passed under the will of Mrs. Donner? The Florida ruling, that the exercise of the power of appointment was testamentary, was an implicit ruling of invalidity of the 1935 agreement as an *inter vivos* trust, but it was only incidental to the main issue raised in the Florida proceeding.

This fact is sufficient answer to the assertion of the defense of *res adjudicata*, but it would seem to be clear that it could not be availed of in any event because of the inherent lack of jurisdiction of the Florida courts over some of the parties to this cause and over the subject matter of this suit.

The Lewis Group argues, in the alternative, that the Hanson Group; however, are collaterally estopped by the Florida judgment from relitigating the question of essential validity of the 1935 agreement as an *inter vivos* trust. The doctrine of collateral estoppel is recognized and applied in proper cases by Delaware courts. *Petrucchi v. Landon*, 9 Terry 491, 107 A. 2d 236; *Niles v. Niles* (Del. Ch.), 111 A. 2d 697.

Florida in a direct proceeding would have had no jurisdiction to determine the validity of an *inter vivos* trust whose situs was in Delaware and whose trustee was not

subject to Florida process. 54 *Am. Jur., Trusts*, §564, §584; *Lines v. Lines*, 142 Pa. 149, 21 A. 809. It may, however, occur that in an action in Florida over which Florida admittedly has jurisdiction it might become necessary for [fol. 265] the Florida court to decide a question which it would have had no jurisdiction over in a direct proceeding brought for that purpose. In such event, when such question has actually been litigated and fought out by the same parties in the prior action, a collateral estoppel may sometimes be raised against such parties in a second action in which the same issue is raised. We are of the opinion, however, that no collateral estoppel arises in the pending case.

In the first place, a recognized exception to the doctrine exists when the second action is brought in a court having jurisdiction of the subject matter and parties to determine directly the issue decided only incidentally in the first action. *Restatement, Judgments*, §71; *Collateral Estoppel by Judgment*, 56 Harv. L.R. 1, 22; *Annotation*, 147 A.L.R. 225. The action before us was brought in the Court of Chancery to determine directly the validity of the 1935 agreement as an *inter vivos* trust and that court has jurisdiction of the subject matter and the necessary parties. Since the holding of invalidity by the Florida courts was only incidental to the main issue presented to it, the case falls directly within the exception to the doctrine.

In the second place, the doctrine of collateral estoppel is applied only when the same parties in the second action have had their day in court in the first action on the issue in question. This rule is based on the consideration that the proper administration of justice will be served best [fol. 266] by limiting parties to one trial of one issue. See *Niles v. Niles*, *supra*.

The Florida judgment does not meet this condition, for the Delaware trustee and the beneficiaries of the exercise of the power have never had their day in court on this issue.

It does not answer this objection to argue, as the Lewis Group does, that these parties received notice of the pendency of the Florida action and could have appeared in that forum and defended the action. To be sure, they could have done so, but they elected not to, for there was no *res*

before the Florida court the seizure of which would have furnished a compulsive force for their appearance. To hold that in the absence of jurisdiction over the *res* in controversy Florida can compel appearance through substituted service would be a violation of the due process clause of the 14th Amendment. *Pennoyer v. Neff*, 95 U.S. 714, 24 S.Ct. 565.

The Lewis Group argues, however, that Wilmington Trust Company and Delaware Trust Company are bound by the Florida judgment to all intents and purposes as though they had appeared in the cause because the various beneficiaries of the trusts were subject to the jurisdiction of the Florida court.⁹ The argument is that when a *cestui que trust* is bound by the judgment of a court, the trustee [fol. 267] is likewise bound because he is in privity with the *cestui*. It is argued that these particular trustees were mere stakeholders and, as such, were unnecessary parties to the Florida action. *Thompson v. Hammond*, (N.Y.) 1 Edw. Ch. 497, and *First National Bank v. Ickes*, 60 F. Supp. 366, are cited in support of the argument. We have read these cases and are of the opinion that they do not remotely support the contention.

Furthermore, we think it the law that while a *cestui que trust* is bound in most circumstances by an adjudication against his trustee, *Iowa-Wisconsin Bridge v. Phoenix Corp.*, supra, the converse of that proposition is not the law, particularly when the adjudication affects the existence of the trust itself. It is the duty of a trustee to defend the existence of his trust, 2 *Scott on Trusts*, §178, even against an attempt by the settlor and sole beneficiary to overthrow it. Cf. *Weymouth v. Delaware Trust Co.*, 29 Del. Ch. 1, 45 A. 2d 427. A trustee is also an indispensable party to a suit involving the trust property, and in defense of title to the trust property. 54 *Am. Jur., Trusts*, §584.

In view of this, it is impossible to accept on principle the argument that a judgment against a *cestui que trust* binds the non-appearing trustee. At the argument, counsel for both groups stated that they had found no authority

⁹ No similar argument is made with respect to the recipients of the \$17,000 appointment.

so holding, nor have our own researches disclosed any. Upon reflection, we are not surprised that there is none, for any such rule might permit a beneficiary by shopping [fol. 268] around among jurisdictions to defeat the trust against the manifest intent of the trustor. We, therefore, are of the opinion that the non-appearing defendants in Florida are not estopped by the judgment on the ground of privity with appearing defendants.

Finally, we think the public policy of Delaware precludes its courts from giving any effect at all to the Florida judgment of invalidity of the 1935 trust. We are dealing with a Delaware trust. The trust *res* and trustee are located in Delaware. The entire administration of the trust has been in Delaware. The attack on the validity of this trust raises a question of first impression in Delaware and one of great importance in our law of trusts. To give effect to the Florida judgment would be to permit a sister state to subject a Delaware trust and a Delaware trustee to a rule of law diametrically opposed to the Delaware law. It is our duty to apply Delaware law to controversies involving property located in Delaware, and not to relinquish that duty to the courts of a state having at best only a shadowy pretense of jurisdiction. Cf. *Taylor v. Crosson*, 11 Del. Ch. 145, 98 A. 375.

We conclude, therefore, that the agreement of 1935 between Mrs. Donner and Wilmington Trust Company created a valid *inter vivos* trust, that the exercise by Mrs. Donner of the power of appointment reserved in that agreement was effective to dispose of the trust corpus, and that the parties to this cause are not estopped by the Florida [fol. 269] judgment from having those questions adjudicated by the Delaware Court of Chancery.

The judgment of the Court of Chancery will be affirmed.

[fol. 270] IN THE SUPREME COURT OF THE STATE OF DELAWARE

[Title omitted]

PETITION FOR RE-ARGUMENT OR IN THE ALTERNATIVE, A
PETITION FOR STAY OF MANDATE—January 25, 1957

DORA STEWART LEWIS, MARY WASHINGTON STEWART BORIE and PAULA BROWNING DENCKLA, by their attorneys, Arthur G. Logan and Aubrey B. Lank, respectfully petition this Court for re-argument of the above cause or in the alternative, that the mandate of this Court be stayed for a period of ninety (90) days to permit an application for a writ of certiorari to be made to the Supreme Court of the United States. As grounds for the petition for re-argument, your petitioners respectfully say:

[fol. 271] 1. That this Court failed to give full faith and credit to the judgment of the Supreme Court of the State of Florida under Article 4, Section 1 of the Constitution of the United States.

"The general rule is that a judgment rendered by a court of one state, authenticated as by law provided, is, under the full faith and credit clause of the United States Constitution, entitled, in the courts of another state of the Union, to force, effect, and full faith and credit, such as it has by law or usage in the courts of the state where the adjudication was had." 31 Am. Jur., Judgments §533, p. 141-142. See: *Roche v. McDonald*, 275 U. S. 449, 72 L. Ed. 365, 48 S. Ct. 142.

2. This Court erroneously reviewed the judgment of the Supreme Court of the State of Florida as though it was a higher Court sitting in the State of Florida. See: *Roche v. McDonald*, *supra*.

3. This Court failed to look into the constitutional and statutory jurisdiction of the Circuit Court for Palm Beach County, Florida, wherein the Florida action was commenced on January 14, 1955. See: *State ex. rel. B. F. Goodrich v. Trammell*, 140 Fla. 500, 192 So. 175; Florida Statutes Annotated, Constitution Article 5, Section 11.

4. This Court erroneously permitted a collateral attack on the judgment of the Supreme Court of the State of [fol. 272] Florida, which collateral attack would not have been permitted by the Courts of the State of Florida. *Coral Realty Co., et al., v. Peacock Holding Co., et al.*, 103 Fla. 916, 138 So. 622. See also, *Smith v. Urquhart*, 129 Fla. 742, 176 So. 787.

5. In applying the full faith and credit clause as to the doctrine of res judicata, this Court failed to apply the law of Florida. In Florida, identity of relief sought is not essential for the application of the doctrine of res judicata. *Murphy v. Murphy*, 151 Fla. 370, 10 So. (2d) 136.

6. This Court erred in holding that the Florida action and the instant action are separate and distinct causes of action. Both actions were and are for declaratory decrees to determine where the funds involved should properly go.

7. In considering the doctrine of res judicata and collateral estoppel, this Court failed to apply the doctrine of virtual representation which has been accepted by the State of Florida. See comments in *Ottensosen v. Scott*, 47 Fla. 276, 37 So. 161.

8. This Court erroneously decided that the parties to this action are not bound in any manner whatsoever by the Florida judgment by virtue of the lack of jurisdiction of the Florida Court over the subject matter of this action.

9. The Circuit Court in and for Palm Beach County had full authority and jurisdiction to decide what passed under [fol. 273] the Will of Dora Browning Donner. *Wilmington Trust Company v. Wilmington Trust Company*, 26 Del. Ch. 397, 24 A. (2d) 309. See also Florida Statutes Annotated, Constitution Article 5, Section 11. Incidental to the determination of this question was the decision as to the validity of the so-called agreement of trust dated March 25, 1935. The Circuit Court in and for Palm Beach County determined that the said trust was invalid and upon appeal to the Supreme Court of the State of Florida, the action of the Florida trial court was affirmed as to the invalidity of the trust and reversed as to the lack of jurisdiction over the non-

appearing parties. The Court held, properly so, that the res of which it had jurisdiction was the will of the testator who died domiciled in the State of Florida.

10. This Court erroneously held that the so-called agreement of trust dated March 25, 1935, wherein Dora Browning Donner was trustor and the Wilmington Trust Company, trustee, was a valid trust where no present interests were created. *Restatement of the Law of Trust* §56, 3 *Scott on Trusts* §330.4, 1 *Bogert on Trusts and Trustees* §103.

11. This Court erroneously held that the reserved power of control under the agreement dated March 25, 1935, did not so limit the trustee in the performance of his duties so as to constitute the agreement of trust, an agency or depository agreement.

[fol. 274] 12. This Court erroneously held that the so-called trust agreement survived the death of the trustor.

Wherefore, your petitioners pray:

(a) That they be granted a re-argument in the above cause.

(b) That in the alternative this Court stay its mandate for a period of ninety (90) days to permit your petitioners to apply for a writ of certiorari to the Supreme Court of the United States.

Respectfully submitted, /s/ Arthur G. Logan ABE,
/s/ Aubrey B. Lank, Attorneys for Dora Stewart
Lewis, Mary Washington Stewart Borie and Paula
Browning Denekla, 400 Continental American
Bldg., Wilmington, Delaware.

[fol. 275] IN THE SUPREME COURT OF THE STATE OF DELAWARE.

No. 8, 1956.

Appeal from the Court of Chancery of the State of Delaware
in and for New Castle County, Civil Action No. 531.

DORA STEWART LEWIS, MARY WASHINGTON STEWART BORIE
and PAULA BROWNING DENCKLA, Defendants Below,
Appellants,

v.

ELIZABETH DONNER HANSON, as Executrix and Trustee under
the Last Will of Dora Browning Donner, deceased,
Plaintiff Below; Appellee,

WILMINGTON TRUST COMPANY, a Delaware corporation, as
Trustee under three separate Agreements, (1) and (2)
with William H. Donner dated March 18, 1932 and March
19, 1932, and (3) with Dora Browning Donner, dated
March 25, 1935, et al., Defendants Below, Appellees.

ORDER STAYING MANDATE—February 7, 1957.

And Now, To Wit: this 7th day of February, A. D. 1957,
the petition of Dora Stewart Lewis, Mary Washington
Stewart Borie and Paula Browning Denckla for re-argu-
ment having come on to be heard, and the same having been
duly considered, it is

Ordered, Adjudged and Decreed:

That the same be and hereby is denied, and it is

Further Ordered, Adjudged and Decreed:

That the mandate of this Court shall be stayed for a
[fol. 276] period of ninety (90) days from the date hereof
to permit the said Dora Stewart Lewis, Mary Washington
Stewart Borie and Paula Browning Denckla to apply to
the Supreme Court of the United States for a writ of cer-
tiorari, and, if such application be made within said period,

the mandate of this Court shall be stayed until the final order of the Supreme Court of the United States.

/s/ Daniel F. Wolcott, Justice; /s/ Howard W. Bramhall, Justice; /s/ James B. Carey, Justice.

Approved as to Form:

/s/ Edwin D. Steel, Jr., DuPont Building, Wilmington, Delaware, Guardian ad litem for Joseph Donner Winsor, Curtin Winsor, Jr., and Donner Hanson;

/s/ C. S. Laaton, DuPont Building, Wilmington, Delaware, Attorney for Wilmington Trust Co., Trustee;

/s/ R. F. Walls, Jr., Industrial Trust Building, Wilmington, Delaware, Guardian ad litem for Dorothy B. R. Stewart, et al.;

/s/ David F. Anderson, Delaware Trust Building, Wilmington, Delaware, Attorney for Delaware Trust Co., Trustee;

/s/ Aubrey B. Lank, Continental American Building, Wilmington, Delaware, Attorney for Dora Stewart Lewis, et al.

[fol. 276] IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1956

No. 977

DORA STEWART LEWIS, et al., Petitioners,

v.

ELIZABETH DONNER HANSON, et al., Respondents.

STIPULATION OF THE PARTIES THAT THERE BE INCLUDED IN THE PRINTED RECORD IN THE SUPREME COURT OF THE UNITED STATES CERTAIN ADDITIONAL CERTIFIED PORTIONS OF THE RECORD BELOW—Filed July 12, 1957

It Is Hereby Stipulated and Agreed by and between petitioners and respondents, in the above-entitled case that

at the request of Edwin D. Steel, Jr., Esquire, guardian ad litem of Joseph Donner Winsor, Curtin Winsor, Jr. and Donner Hanson, there should be included in the printed record in the Supreme Court of the United States additional certified portions of the record below before the Court of Chancery of the State of Delaware in and for New Castle County which constituted a portion of the record in the Supreme Court of Delaware in the case entitled Dora Stewart Lewis, et al. v. Elizabeth Donner Hanson, et al., being No. 8, 1956 on the dockets of that Court, which additional portions of the record are hereinafter enumerated and physically annexed to this stipulation:

1. Affidavit of Paul D. Lovett dated November 12, 1954 (including Exhibits A, B and C) annexed to the "Motion for Summary Judgment" of Edwin D. Steel, Jr., Guardian ad litem, etc., filed in the Court of Chancery of the State of [fol. 277] Delaware in and for New Castle County on November 18, 1954.

2. Affidavit of George Ainslie Goad dated November 10, 1954 (excluding exhibits) annexed to the "Motion for Summary Judgment" of Edwin D. Steel, Jr., Guardian ad litem, etc., filed in the Court of Chancery of the State of Delaware in and for New Castle County on November 18, 1954.

3. Affidavit of C. Kenneth Baxter dated November 12, 1954, paragraphs 10, 11 and 12, annexed to the "Motion for Summary Judgment" of Edwin D. Steel, Jr., Guardian ad litem, etc., filed in the Court of Chancery of the State of Delaware in and for New Castle County on November 18, 1954. [Paragraphs 1-9 of this Affidavit have heretofore been designated by Petitioners to be included in the printed record and appear at pages A110-A113 of the printed Appendix of Petitioners as the same was filed in the Supreme Court of the State of Delaware.]

4. Proceedings in the Court of Chancery of the State of Delaware in and for New Castle County in the case entitled "In the matter of Dorothy B. R. Stewart, an insane person" including (1) petition of Elwyn L. Middleton, verified March 18, 1953 (having annexed thereto copies of proceedings in The Court of the County Judge in and for Palm

Beach County, Florida "In the matter of the Guardianship of Dorothy B. R. Stewart, an incompetent" being No. 8293 on the dockets of said court, Letters of Guardianship granted to Elwyn L. Middleton therein, Letters of Discharge of E. Harris Drew therein), (2) the certification of the Register in Chancery in and for New Castle County showing that such proceedings of the Court of the County Judge [fol. 278] ~~in~~ and for Palm Beach County, Florida, are on file in the Office of the Register in Chancery in and for New Castle County, State of Delaware, and (3) the order of The Honorable Collins J. Seitz, Chancellor, entered thereon on November 27, 1953 and the Certification of the Register in Chancery in and for New Castle County, Delaware, annexed thereto filed in the Court of Chancery of the State of Delaware in and for New Castle County on November 10, 1955. [Not to be included in the printed record in the Supreme Court of the United States are the seven (7) photostatic copies of pages comprising "Final Return of E. Harris Drew, Guardian of the Property of Dorothy B. R. Stewart, covering the period from June 25, 1952 to December 12, 1952" as the same are a part of the proceedings aforesaid in The Court of the County Judge in and for Palm Beach County, Florida.]

5. Affidavit of Paul D. Lovett dated October 24, 1955 and Affidavit of C. Kenneth Baxter dated October 24, 1955 filed in the Court of Chancery of the State of Delaware in and for New Castle County on October 26, 1955.

Dated: July 8, 1957

Arthur G. Logan, Attorney for Dora Stewart Lewis,
Mary Washington Stewart Borie, Paula Browning
Denckla, Petitioners.

Edwin D. Steel, Jr., Guardian ad litem for Joseph
Donner Winsor, Curtin Winsor, Jr. and Donner
Hanson, Respondent.

R. B. Walls, Jr., Guardian ad litem for Dorothy B. R.
Stewart and William Donner Denckla, Respondent.

C. S. Layton, Attorney for Wilmington Trust Com-
pany, Respondent.

David F. Anderson, Attorney for Delaware Trust
Company, Respondent.

[fol. 279]

ATTACHMENT TO STIPULATION

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 531

ELIZABETH DONNER HANSON, as Executrix and Trustee under the Last Will of Dora Browning Donner, deceased,
Plaintiff,

v.

WILMINGTON TRUST COMPANY, et al., Defendants.

STATE OF DELAWARE,
NEW CASTLE COUNTY, ss.:

Be It Remembered that on this 12th day of November, 1954, personally appeared before me the undersigned, a Notary Public of the State and County aforesaid, Paul D. Lovett, who being by me duly sworn did depose and say:

1. That he is a vice-president and in charge of the Trust Department of Delaware Trust Company, and at all times hereinafter referred to has been an officer in said Trust Department.

2. That on November 26, 1948, a Trust Agreement was entered into between Elizabeth Donner Hanson and Delaware Trust Company as Trustee for the benefit of Donner Hanson and others, and on the same date a Trust Agreement was entered into between Delaware Trust Company as Trustee and Elizabeth Donner Hanson for the benefit of Joseph Donner Winsor and others, and that at all times since November 26, 1948 the trusts have been in full force and effect and have been administered by the Delaware Trust Company as Trustee. A true and correct copy of each [fol. 280] of the trust agreements is attached hereto and marked Exhibits A and B respectively.

3. That Delaware Trust Company is Successor Trustee under an agreement dated August 6, 1940 (No. 8555) for the benefit of Katherine N. R. Denckla Ordway and others. A true and correct copy of the agreement dated August 6,

1940 together with the following writings relating thereto are hereto attached and marked collectively as Exhibit C:

Letter dated October 11, 1940 from Robert N. Donner, John Stewart and Dora Donner-Ide to Montreal Trust Company

Deed of conveyance of additional securities dated June 20, 1941 from W. H. Donner to Montreal Trust Company, trustee under agreement dated August 6, 1940

Letter dated June 23, 1941 from Donner Estates, Inc., to Montreal Trust Company

Letter dated June 23, 1941 from Donner Estates, Inc., to Delaware Trust Company

Letter dated June 23, 1941 from Donner Estates, Inc., to Delaware Trust Company

Letter dated June 26, 1941 from Delaware Trust Company to Donner Estates, Inc.

Letter dated June 26, 1941 from Delaware Trust Company to Montreal Trust Company

4. The assets held by the Delaware Trust Company as trustee under the two trusts referred to in paragraph 2 hereof have been located exclusively within the State of Delaware at all times since the inception of such trusts, and the assets held by the Delaware Trust Company as trustee under the trust referred to in paragraph 3 hereof have been located exclusively within the State of Delaware at all times since such assets were received by the Delaware Trust Company shortly after its appointment as Successor Trustee.

[fol. 281] 5. The Trustee has no office or other place of business outside of the State of Delaware, and all of its duties as Trustee under the three aforementioned trusts have been performed within the State of Delaware.

6. That on or about March 30, 1953, Wilmington Trust Company, as Trustee under an agreement dated March 25, 1935 between itself and Dora Browning Donner, transferred securities and cash having an aggregate value of \$200,000, to the Delaware Trust Company as Trustee under agreement dated November 26, 1948 with Elizabeth Donner Hanson for Donner Hanson and others (Exhibit A hereto); and

on or about the same date the Wilmington Trust Company, Trustee as aforesaid, transferred securities and cash having an aggregate value of \$200,000 to the Delaware Trust Company as Trustee under agreement dated November 26, 1948 with Elizabeth Donner Hanson for Joseph Donner Winsor and others (Exhibit B hereto). That at the time when such transfers were effected and the securities and cash were received by the Delaware Trust Company, it had no knowledge of any kind that an attack had been or would be made by anybody upon the validity or effectiveness of the Trust Agreement dated March 25, 1935 between Dora Browning Donner and Wilmington Trust Company, as Trustee, or the exercises of the power of appointment by Dora Browning Donner thereunder.

Paul D. Lovett

Sworn to and subscribed before me the day and year first above written.

Lindsay Greenplate, Notary Public.

[fol. 282]

EXHIBIT A TO AFFIDAVIT

THIS AGREEMENT, made this twenty-sixth day of November A.D. 1948, between ELIZABETH DONNER HANSON, of Palm Beach, Florida, party of the first part, hereinafter called "Trustor" and DELAWARE TRUST COMPANY, a corporation of the State of Delaware, party of the second part, hereinafter called "Trustee".

WITNESSETH

WHEREAS, the Trustor desires to establish a trust of certain securities and property described in Schedule "A" annexed hereto and made a part hereof, which securities and property together with the investments, reinvestments, and proceeds thereof, and such other securities and property as hereafter may be received by the Trustee hereunder, are hereinafter called the trust fund.

NOW, THEREFORE, in consideration of the premises, the mutual covenants hereinafter set forth and the sum of One

Dollar by the Trustee to the Trustor in hand paid, the receipt whereof is hereby acknowledged, the Trustor has assigned, transferred, and delivered and by these presents does assign, transfer, and deliver the securities and property described in said Schedule "A" unto the Trustee and its successors, IN TRUST, NEVERTHELESS, for the following uses, intents and purposes; that is to say:—

1. The Trustee shall hold, manage, invest, and reinvest the trust fund, collect the income thereof, and after paying out of such income all taxes, charges, and expenses payable thereout, including compensation to the Trustee as hereinafter provided, shall until DONNER HANSON, son of the Trustor, attains the age of twenty-five (25) years use such income or so much thereof as in its discretion may be considered advisable but with the consent and approval of the Advisor or Advisors (if there be Advisors or an Advisor then acting) for the support, maintenance, and education [fol. 283] of the said DONNER HANSON, accumulating and adding to the capital of the trust fund any income not so applied until the said DONNER HANSON attains the age of twenty-five (25) years.

2. When the said DONNER HANSON attains the age of twenty-five (25) years, the Trustee shall pay and deliver to him one-fourth ($\frac{1}{4}$) of the capital of the trust fund as it then is and thereafter shall pay to him the net income derived from the remainder of the trust fund during the remainder of his lifetime.

3. Upon the death of the said DONNER HANSON, the Trustee shall hold the capital of the remaining trust fund for his issue or the issue of the Trustor or some one or more of them in such shares and proportions as the said DONNER HANSON may either by instrument in writing executed by him during his lifetime and filed with the Trustee or by his last Will and Testament direct and appoint. In default of such direction by the said DONNER HANSON or so far as it shall be void or shall not extend or take effect, the remainder of the trust fund shall be divided in equal shares per stirpes among the issue of the said DONNER HANSON alive at the time of his death. If no issue of the said DONNER HANSON shall survive him, then the capital of the remainder of the

trust fund shall be divided in equal shares among the other children of Trustor alive at the time of his death with representation in favor of the issue of any such other child who may then be dead and have left issue then alive and in the event of there being no such other child or children or their descendants then living, then the capital of the remainder of the trust fund shall be paid to the next of kin of the Trustor in accordance with the intestate laws of the State of Delaware then in force, and as if the Trustor had died intestate immediately after the death of the said DONNER HANSON.

4. No person being or claiming to be a child of ROBERT [fol. 28+] NEWSOM DONNER, (brother of the Trustor) born before the eighth (8th) day of January, 1924, or a descendant of any such person, shall be included in the foregoing purposes as a next of kin of the Trustor.

5. The expression "descendants of the Trustor" wherever used in this agreement shall include adopted children of the Trustor and their descendants.

6. All the benefits conferred upon the beneficiaries hereunder are given upon the express condition that they shall at all times be exempt from seizure or attachment and further that so long as any portion of the trust fund or the revenue therefrom is in the possession of the Trustee it shall be incapable of being assigned by any beneficiary in favor of any person other than the issue of such beneficiary or the descendants of the Trustor but this shall not in any way effect the powers hereinafter conferred on the Trustee. None of the property hereby given shall either in capital or in revenue fall into or form part of any community of property which may subsist between such beneficiary and his or her consort and the share of any female beneficiary shall be paid to her on her own receipt without the written authorization or consent of her husband being required.

GENERAL POWERS GRANTED TO TRUSTEE

7. Subject to the provisions and limitations herein expressly set forth, the Trustee shall have in general, the power to do and perform any and all acts and things in

relation to the Trust Fund in the same manner and to the same extent as an individual might or could do with respect to his own property. No enumeration of specific powers herein made shall be construed as a limitation on the foregoing general power, nor shall any of the powers herein conferred upon the Trustee be exhausted by the use thereof, but each shall be continuing.

[fol. 285] (a) The Trustee is specifically authorized and empowered:

(1) To retain any and all stocks, bonds, notes, securities and/or other property constituting the original trust fund or added thereto without liability on the part of the Trustee for any decreases in the value thereof.

(2) To determine whether expenses and other disbursement shall be charged against principal or income or partly against principal and partly against income and such determinations shall be conclusive and binding upon all persons and corporations interested therein.

(3) To take and to hold any security or other property constituting a part of the trust fund, in bearer form or in its own name or in the name of its nominee or nominees, without disclosing its fiduciary capacity and the Trustee's liability shall be neither increased nor decreased thereby.

(4) To make any division or distribution of the trust fund herein provided for in cash or in kind, or partly in cash and partly in kind and to value and apportion the property to be so divided or distributed, which valuation and apportionment shall be final and conclusive upon all persons and corporations interested therein.

(b) Subject to the direction in writing of the Advisor or Advisors hereinafter named or their successor or successors as such Advisor, the Trustee is also specifically authorized and empowered:

(1) To sell at public or private sale, exchange for like or unlike property, convey, lease for terms longer or shorter than the trust and otherwise dispose of any and all property, real or personal, held in the trust fund for such price and upon such terms and credits as the Trustee may deem proper.

[fol. 286] (2) To invest the proceeds of any such sale or sales or any other money available for investment in such stocks, bonds, notes, securities and/or other property as may be deemed appropriate for this trust fund, irrespective of the rules of investment applying to trusts under any present or future laws of the State of Delaware or elsewhere, or to retain uninvested the proceeds of any such sale or any other money available for investment for such period of time as may be deemed to the best interest of the trust estate.

(3) To vote directly or by proxy at any election or stockholders' meeting any shares of stock held hereunder.

(4) To participate in any plan or proceeding for protecting or enforcing any right, obligation or interest arising from any stock, bond, note or security held in the trust fund or for reorganizing, consolidating, merging or adjusting the finances of any corporation issuing the same, to accept in lieu thereof any new or substituted stocks, bonds, notes and/or securities, whether of the same or a different kind or class or with different priorities, rights or privileges, to pay any assessment or any expense incident thereto and to do any other act or thing that the Trustee may deem necessary or advisable in connection therewith.

(c) If at any time during the continuance of this trust there shall be no Advisor of the trust, or if the Advisor of the trust shall fail to give any written direction or to communicate in writing to the Trustee, his or her approval or disapproval as to the exercise of any of the aforesaid powers contained in paragraph (b), within 30 days after the Trustee shall have sent to the Advisor, by registered mail, at his or her last known address, a written request for such consent, the Trustee is hereby authorized and empowered to take such action in the premises as it, in its sole discretion, shall deem to be for the best interest of the trust estate.

8. The Trustor and/or any other person may at any time and from time to time add to the trust fund by assigning, [fol. 287] transferring, conveying, delivering or making

POWERS RESERVED TO THE TRUSTOR

payable to the Trustee cash, securities and/or other property; and all such cash, securities and other property shall be held by the Trustee subject to the terms of this trust.

9. The Trustor nominates, constitutes and appoints THE DONNER CORPORATION, a Pennsylvania corporation, to be the Advisor of this trust, and reserves the right at any time and from time to time by written notice to the Trustee, to nominate additional, alternative and/or succeeding Advisor or Advisors of the trust, to revoke any such nomination and/or to remove any existing Advisor or Advisors of the trust. Any additional alternative and/or succeeding Advisor or Advisors may be a person, firm, association and/or corporation. Any such nomination, revocation or removal shall become effective at the time or times and upon the happening of the event or events and subject to such conditions specified in such nomination, revocation or removal. Any such nomination may provide that the Advisor or Advisors so appointed shall be paid by the Trustee a reasonable fee in any amount to be agreed upon by the Trustee and the said Advisor or Advisors, not to exceed four per cent of the gross income of the trust fund in any year, in compensation of his or their services and the expenses as Advisor or Advisors of the trust; provided, however, that so long as THE DONNER CORPORATION, a Pennsylvania Corporation, is serving as the Advisor of the Trust, the annual compensation for its services as such Advisor shall be One Hundred Twenty-five Dollars (\$125.00) for each One Hundred Thousand Dollars (\$100,000.00) of asset value in the Trust and the asset value for this purpose shall be determined to be the mean between the reasonable asset value on the first day of January and the last day of December of each year. In calculating the compensation on asset value so determined the minimum fee shall be One Hundred Twenty-five Dollars (\$125.00) per annum and whenever the asset value on such valuation dates exceeds One Hundred Thousand Dollars (\$100,000.00), the excess over units of One Hundred Thousand Dollars (\$100,000.00) if less than Fifty Thousand Dollars (\$50,000.00) shall be disregarded, and if more than Fifty Thousand Dollars [fol. 288] (\$50,000.00), be regarded as a full unit of One Hundred Thousand Dollars (\$100,000.00). Said compensa-

tion shall be paid out of the income of the Trust in quarterly instalments on the tenth (10th) day of February, May, August and November in each year commencing with the calendar year 1948, such quarterly instalments to be based upon the asset value of the Trust for the preceding year. When the asset value and the compensation are finally and accurately determined in the aforesaid manner for any year, any underpayment or overpayment of compensation which may have resulted from quarterly payments based on prior year valuations shall be deducted from or added to, as the case may be, the first quarterly payment of the succeeding year. The Trustee may rely conclusively upon certifications made by THE DONNER CORPORATION as to the aggregate reasonable value of the Trust Assets on which their compensation is based and the Trustee shall in no event be required to recover any overpayment of their compensation unless it is possible to do so in the manner hereinabove provided.

MISCELLANEOUS ADMINISTRATIVE CLAUSES

10. The Trustee shall be accountable only for reasonable diligence and the care of a prudent administrator in the management of the trust and shall not be liable for any act or default on the part of any attorney, auditor or broker or other person appointed by it hereunder, but shall only be liable for its own acts and defaults.

11. Any stock dividends or subscription rights or distribution of principal which may be received by the Trustee on investments from time to time held by it hereunder shall be added to and form a part of the principal of said trust fund and shall be subject to the trust herein created.

12. The Trustee shall charge all premiums and credit all discounts on investments against or to principal, as the [fol. 289] case may be, but not against or to income, and the Trustee shall not be required to create a reserve out of income for depreciation, obsolescence, amortization or other waste of principal. The Trustee shall be liable only for acts or omissions done or permitted to be done by it hereunder in bad faith but shall not be liable for acts or omissions done or permitted to be done in good faith.

13. The Trustee shall be entitled to receive as compensation two and one-half per centum of the gross income, payable at the time or times the other income is disbursed, or invested and one-half of one per centum on such part of the principal as shall be disbursed, provided, however, that if this trust is terminated within three years of the date hereof the commission on principal shall be three-tenths of the rate aforesaid; and provided further that if this trust is terminated after three years from the date hereof, and before the expiration of ten years from the date hereof, an additional one-tenth of the rate aforesaid shall be allowed for each additional year until ten years from the date hereof.

14. The Trustee shall furnish every three months statements of principal and income to the Advisor or Advisors then acting and also to any beneficiary hereunder who is an adult.

15. The Trustee accepts this trust and agrees to perform the same in accordance with its terms and conditions.

16. This trust shall be irrevocable and shall be construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, ELIZABETH DONNER HANSON, the Trustor, has hereunto set her hand and seal and DELAWARE TRUST COMPANY, the Trustee, has caused this agreement to be signed in its name by one of its Vice Presidents and its [fol. 290] corporate seal to be hereunder affixed by its Assistant Secretary, all done in triplicate on the day and year first above written.

Witness:

/s/ Martha Mark Quinton

/s/ Elizabeth Donner Hanson (SEAL)

DELAWARE TRUST COMPANY

By /s/ Paul D. Lovett
Vice President

Attest: /s/ Eleanor L. Clemo
Assistant Secretary

Seal.

[fol. 291]

EXHIBIT B TO AFFIDAVIT

THIS AGREEMENT, made this twenty-sixth day of November A. D. 1948, between ELIZABETH DONNER HANSON, of Palm Beach, Florida, party of the first part, hereinafter called "Trustor" and DELAWARE TRUST COMPANY, a corporation of the State of Delaware, party of the second part, hereinafter called "Trustee".

WITNESSETH :

WHEREAS, the Trustor desires to establish a trust of certain securities and property described in Schedule "A" annexed hereto and made a part hereof, which securities and property together with the investments, reinvestments and proceeds thereof, and such other securities and property as hereafter may be received by the Trustee hereunder, are hereinafter called the trust fund.

NOW, THEREFORE, in consideration of the premises, the mutual covenants hereinafter set forth and the sum of One Dollar by the Trustee to the Trustor in hand paid, the receipt whereof is hereby acknowledged, the Trustor has assigned, transferred, and delivered and by these presents does assign, transfer, and deliver the securities and property described in said Schedule "A" unto the Trustee and its successors, IN TRUST, NEVERTHELESS, for the following uses, intents and purposes, that is to say :

1. The Trustee shall hold, manage, invest, and reinvest the trust fund, collect the income thereof, and after paying out of such income all taxes, charges, and expenses payable thereout, including compensation to the Trustee as hereinafter provided, shall until JOSEPH DONNER WINSOR, son of the Trustor, attains the age of twenty-five (25) years use such income or so much thereof as in its discretion may be considered advisable but with the consent and approval of the Adviser or Advisers (if there be Advisers or an Adviser then acting) for the support, maintenance, and education of the said JOSEPH DONNER WINSOR, accumulating and adding to the capital of the trust fund any income not so applied until the said JOSEPH DONNER WINSOR attains the age of twenty-five (25) years.

[fol. 292] 2. When the said JOSEPH DONNER WINSOR attains the age of twenty-five (25) years, the Trustee shall pay and deliver to him one-fourth ($\frac{1}{4}$) of the capital of the trust fund as it then is and thereafter shall pay to him the net income derived from the remainder of the trust fund during the remainder of his lifetime.

3. Upon the death of the said JOSEPH DONNER WINSOR, the Trustee shall hold the capital of the remaining trust fund for his issue or the issue of the Trustor or some one or more of them in such shares and proportions as the said JOSEPH DONNER WINSOR may either by instrument in writing executed by him during his lifetime and filed with the Trustee or by his Last Will and Testament direct and appoint. In default of such direction by the said JOSEPH DONNER WINSOR, or so far as it shall be void or shall not extend or take effect, the remainder of the trust fund shall be divided in equal shares per stirpes among the issue of the said JOSEPH DONNER WINSOR alive at the time of his death. If no issue of the said JOSEPH DONNER WINSOR shall survive him, then the capital of the remainder of the trust fund shall be divided in equal shares among the other children of Trustor alive at the time of his death with representation in favor of the issue of any such other child who may then be dead and have left issue then alive and in the event of there being no such other child or children or their descendants then living, then the capital of the remainder of the trust fund shall be paid to the next of kin of the Trustor in accordance with the intestate laws of the State of Delaware then in force, and as if the Trustor had died intestate immediately after the death of the said JOSEPH DONNER WINSOR.

4. No person being or claiming to be a child of ROBERT NEWSOM DONNER, (brother of the Trustor) born before the eighth (8th) day of January, 1924, or a descendant of any such person, shall be included in the foregoing purposes as a next of kin of the Trustor.

[fol. 293] 5. The expression "descendants of the Trustor" wherever used in this agreement shall include adopted children of the Trustor and their descendants.

6. All the benefits conferred upon the beneficiaries hereunder are given upon the express condition that they shall at all times be exempt from seizure or attachment and further that so long as any portion of the trust fund or the revenue therefrom is in the possession of the Trustee it shall be incapable of being assigned by any beneficiary in favor of any person other than the issue of such beneficiary or the descendants of the Trustor but this shall not in any way affect the powers hereinafter conferred on the Trustee. None of the property hereby given shall either in capital or in revenue fall into or form part of any community of property which may subsist between such beneficiary and his or her consort and the share of any female beneficiary shall be paid to her on her own receipt without the written authorization or consent of her husband being required.

GENERAL POWERS GRANTED TO TRUSTEE

7. Subject to the provisions and limitations herein expressly set forth, the Trustee shall have in general, the power to do and perform any and all acts and things in relation to the Trust Fund in the same manner and to the same extent as an individual might or could do with respect to his own property. No enumeration of specific powers herein made shall be construed as a limitation on the foregoing general power, nor shall any of the powers herein conferred upon the Trustee be exhausted by the use thereof, but each shall be continuing.

(a) The Trustee is specifically authorized and empowered:

(1) To retain any and all stocks, bonds, notes, securities and/or other property constituting the original trust fund or added thereto without liability on the part of the Trustee for any decrease in the value thereof.

[fol. 294] (2) To determine whether expenses and other disbursements shall be charged against principal or income or partly against principal and partly against income and such determinations shall be conclusive and binding upon all persons and corporations interested therein.

(3) To take and to hold any security or other property constituting a part of the trust fund, in bearer form or in its own name or in the name of its nominee or nominees, without disclosing its fiduciary capacity and the Trustee's liability shall be neither increased nor decreased thereby.

(4) To make any division or distribution of the trust fund herein provided for in cash or in kind, or partly in cash and partly in kind and to value and apportion the property to be so divided or distributed, which valuation and apportionment shall be final and conclusive upon all persons and corporations interested therein.

(b) Subject to the direction in writing of the Advisor or Advisors hereinafter named or their successor or successors as such Advisor, the Trustee is also specifically authorized and empowered:

(1) To sell at public or private sale, exchange for like or unlike property, convey, lease for terms longer or shorter than the trust and otherwise dispose of any and all property, real or personal, held in the trust fund for such price and upon such terms and credits as the Trustee may deem proper.

(2) To invest the proceeds of any such sale or sales or any other money available for investment in such stocks, bonds, notes, securities and/or other property as may be deemed appropriate for this trust fund, irrespective of the rules of investment applying to trusts under any present or future laws of the State of Delaware or elsewhere, or to retain uninvested the proceeds of any such sale or any other money available for investment for such period of time as may be deemed to the best interest of the trust estate.

[fol. 295] (3) To vote directly or by proxy at any election or stockholders' meeting any shares of stock held hereunder.

(4) To participate in any plan or proceeding for protecting or enforcing any right, obligation or interest arising from any stock, bond, note or security held in the trust fund or for reorganizing, consolidating, merging or

adjusting the finances of any corporation issuing the same, to accept in lieu thereof any new or substituted stocks, bonds, notes and/or securities, whether of the same or a different kind or class or with different priorities, rights or privileges, to pay any assessment or any expense incident thereto and to do any other act or thing that the Trustee may deem necessary or advisable in connection therewith.

(c) If at any time during the continuance of this trust there shall be no Advisor of the trust, or if the Advisor of the trust shall fail to give any written direction or to communicate in writing to the Trustee, his or her approval or disapproval as to the exercise of any of the aforesaid powers contained in paragraph (b), within 30 days after the Trustee shall have sent to the Advisor, by registered mail, at his or her last known address, a written request for such consent, the Trustee is hereby authorized and empowered to take such action in the premises as it, in its sole discretion, shall deem to be for the best interest of the trust estate.

POWERS RESERVED TO THE TRUSTOR.

8. The Trustor and/or any other person may at any time and from time to time add to the trust fund by assigning, transferring, conveying, delivering or making payable to the Trustee cash, securities and/or other property; and all such cash, securities and other property shall be held by the Trustee subject to the terms of this trust.

9. The Trustor nominates, constitutes and appoints The Donner Corporation, a Pennsylvania corporation, to be the Advisor of this trust, and reserves the right at any time and from time to time by written notice to the Trustee, to nominate additional, alternative and/or succeeding Advisor or Advisors of the trust, to revoke any such nomination and/or to remove any existing Advisor or Advisors of the trust. Any additional alternative and/or succeeding Advisor or Advisors may be a person, firm, association and/or corporation. Any such

nomination, revocation or removal shall become effective at the time or times and upon the happening of the event or events and subject to such conditions specified in such nomination, revocation or removal. Any such nomination may provide that the Advisor or Advisors so appointed shall be paid by the Trustee a reasonable fee in an amount to be agreed upon by the Trustee and the said Advisor or Advisors, not to exceed four per cent of the gross income of the trust fund in any year, in compensation of his or their services and the expenses as Advisor or Advisors of the trust; provided, however, that so long as THE DONNER CORPORATION, a Pennsylvania corporation, is serving as the Advisor of the Trust, the annual compensation for its services as such Advisor shall be One Hundred Twenty-five Dollars (\$125.00) for each One Hundred Thousand Dollars (\$100,000.00) of asset value in the Trust and the asset value for this purpose shall be determined to be the mean between the reasonable asset value of the first day of January and the last day of December of each year. In calculating the compensation on asset value so determined the minimum fee shall be One Hundred Twenty-five Dollars (\$125.00) per annum and whenever the asset value on such valuation dates exceeds One Hundred Thousand Dollars (\$100,000.00), the excess over units of One Hundred Thousand Dollars (\$100,000.00) if less than Fifty Thousand Dollars (\$50,000.00) shall be disregarded, and if more than Fifty Thousand Dollars (\$50,000.00), be regarded as a full unit of One Hundred Thousand Dollars (\$100,000.00). Said compensation shall be paid out of the income of the Trust in quarterly instalments on the tenth (10th) day of February, May, August and November in each year commencing with the calendar year 1948, such quarterly instalments to be based upon the asset value of the trust for the preceding year. When the asset value and the [fol. 297] compensation are finally and accurately determined in the aforesaid manner for any year, any underpayment or overpayment of compensation which may have resulted from quarterly payments based on prior year valuations shall be deducted from or added to, as the case may be, the first quarterly payment of the succeeding

dred and forty in virtue of a Power of Attorney executed before E. C. Common, Notary, on the Fourth day of January Nineteen hundred and forty under Number 11111 of his minutes.

Dated at Montreal this Twelfth day of August Nineteen hundred and forty.

/s/ H. P. Honey, N. P.

[fol. 311]. SCHEDULE "A" TO EXHIBIT "C"

KATHERINE N. RODGERS (DENCKLA) TRUST

BONDS

\$80,000. County of Cameron, Texas, Ref. Road 3 — 5% due 10th April.

\$16,000 — 1953

4,000 — 1963

20,000 — 1969

20,000 — 1970

20,000 — 1971

\$40,000. City of Detroit, Michigan "Water" 4 $\frac{1}{4}$ % due 15th December 1959

\$50,000. City of Los Angeles, California, "Electric Plant Revenue" 4% due 1st Dec.

\$10,000 — 1974

40,000 — 1975

\$25,000. State of Arkansas "Highway" 5% due 1st April 1974.

\$25,000. Township of North Bergen, New Jersey, Refunding 4 — 4 $\frac{1}{2}$ % due 1st Dec. 1975.

\$25,000. City of Montgomery, Alabama, "School" 5% due 1st January 1959.

\$50,000. Washington Toll Bridge Authority Revenue 4% due 1st December 1968.

\$25,000. Commonwealth of Pennsylvania Turnpike Revenue 3 $\frac{3}{4}$ % due 1st August 1968.

\$20,000. Province of British Columbia, Canada 4 $\frac{1}{4}$ % due 1st April 1945.

year. The Trustee may rely conclusively upon certifications made by THE DENNER CORPORATION as to the aggregate reasonable value of the Trust assets on which their compensation is based and the Trustee shall in no event be required to recover any overpayment of their compensation unless it is possible to do so in the manner hereinabove provided.

MISCELLANEOUS ADMINISTRATIVE CLAUSES

10. The Trustee shall be accountable only for reasonable diligence and the care of a prudent administrator in the management of the trust and shall not be liable for any act or default on the part of any attorney, auditor or broker or other person appointed by it hereunder, but shall only be liable for its own acts and defaults.

11. Any stock dividends or subscription rights or distribution of principal which may be received by the Trustee on investments from time to time held by it hereunder shall be added to and form a part of the principal of said trust fund and shall be subject to the trust herein created.

12. The Trustee shall charge all premiums and credit all discounts on investments against or to principal, as the case may be, but not against or to income, and the Trustee shall not be required to create a reserve out of income for depreciation, obsolescence, amortization or other waste of principal. The Trustee shall be liable only for acts or omissions done or permitted to be done by it hereunder in bad faith but shall not be liable for acts or omissions done or permitted to be done in good faith.

13. The Trustee shall be entitled to receive as compensation two and one-half per centum of the gross income, payable at the time or times the other income is disbursed or invested and one-half of one per centum on such part [fol. 298] of the principal as shall be disbursed; provided, however, that if this trust is terminated within three years of the date hereof the commission on principal shall be three-tenths of the rate aforesaid; and provided further that if this trust is terminated after three years from the date hereof, and before the expiration of ten years

from the date hereof, an additional one-tenth of the rate aforesaid shall be allowed for each additional year until ten years from the date hereof.

14. The Trustee shall furnish every three months statements of principal and income to the Advisor or Advisors then acting and also to any beneficiary hereunder who is an adult.

15. The Trustee accepts this trust and agrees to perform the same in accordance with its terms and conditions.

16. This trust shall be irrevocable, and shall be construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, ELIZABETH DONNER HANSON, the Trustor, has hereunto set her hand and seal and DELAWARE TRUST COMPANY, the Trustee, has caused this agreement to be signed in its name by one of its Vice Presidents and its corporate seal to be hereunto affixed by its Assistant Secretary, all done in triplicate on the day and year first above written.

/s/ Elizabeth Donner Hanson (SEAL)

DELAWARE TRUST COMPANY

By: /s/ Paul D. Lovett
Vice President

Seal

Attest: /s/ Eleanor L. Clemon
Assistant Secretary

Witness:

/s/ Martha Mark Quinton

BEFORE

Mtfe HERBERT BAYNE McLEAN the undersigned Notary for the Province of Quebec practising at the City of Montreal,

APPEARED:

WILLIAM HENRY DONNER of Montreux in Switzerland Retired Manufacturer presently in the City of Montreal;

Hereinafter called "the Donor"

PARTY OF THE FIRST PART:

AND

MONTREAL TRUST COMPANY a corporation duly incorporated and having its head office at the City of Montreal herein acting and represented by FREDERICK G. DONALDSON its Vice-President and General Manager and JOHN C. KELLY its Assistant General Manager both of the City of Montreal and hereunto duly authorized as they declare;

Hereinafter called "the Trustee"

PARTY OF THE SECOND PART:

WHO HAVE ENTERED INTO THE FOLLOWING AGREEMENT
NAMELY:

ARTICLE I. The Donor hath conveyed to the Trustee by gift inter vivos and irrevocable for the benefit of his adopted daughter DAME KATHERINE N. RODGERS of Villa Nova in the State of Pennsylvania one of the United States of America, formerly wife of C. PAUL DENCKLA, and her issue in trust the securities set out in Schedule "A" hereto annexed and signed for identification by the parties hereto and the undersigned Notary which securities or other property acquired by reinvesting the said securities or at any time representing them is hereinafter called the "Trust Fund".

ARTICLE II. The Trustee acknowledges the receipt of the said securities which it undertakes to hold in trust always upon the trusts and for the purposes following namely:

(a) The Trustee shall invest and reinvest the trust fund in accordance with the powers hereinafter conferred upon it and shall receive the income from the trust fund and shall pay the net annual income from the trust fund to the said Dame Katherine N. Rodgers (Denckla) in quarterly instalments during the remainder of her lifetime.

[fol. 300] (b) And on the death of the said Dame Katherine N. Rodgers (Denckla) the Trustee shall divide the capital of the trust fund in equal shares so that there shall be one of such equal shares for each child in the first degree of the said Dame Katherine N. Rodgers (Denckla) then alive and one of such equal shares for the issue of any such child in the first degree who may then be dead and have left issue then alive and shall deal with such shares as follows:

1. The Trustee shall set aside one of such equal shares for each such child in the first degree then alive and shall pay to such child during his or her lifetime the net income derived from such share provided that while any such child is a minor the Trustee shall use the income from the share or so much thereof as the Trustee in its uncontrolled discretion may deem necessary or advisable for the benefit of such child accumulating and adding to the capital of the share any income not so applied and upon the death of such child in the first degree the Trustee shall hold the capital of the share thus set aside for such child in trust for his or her issue or the issue of the Donor or some one or more of them in such shares and proportions as such child in the first degree may either by instrument executed by such child during his or her lifetime and filed with the Trustee or by his or her last Will and Testament direct and appoint. In default of such direction by such child or so far as it shall be void or shall not extend or take effect the capital of such share shall be divided in equal shares par souches among the issue of such

child alive at the time of his or her death. If no issue of such child shall survive him or her then such share shall be divided in equal shares among the other children in the first degree of the said Dame Katherine N. Rodgers (Denckla) then alive with representation in favour of the issue of any such child who may then be dead and have left issue then alive and in the event of there being no such other children or their descendants then alive then the capital shall be paid to the abintestate heirs of the Donor then alive in accordance with the laws of the Province of Quebec as then in force and as if the Donor had died intestate immediately after the death of such child.

[fol. 301] 2. The Trustee shall set aside one of such equal shares for the issue of any such child in the first degree who may then be dead and have left issue then alive and shall divide such share in equal shares par souches among such issue the shares of such issue to be paid to them on their respectively attaining the age of twenty-one years, the shares of such issue to be vested in ownership in such issue but to be retained by the Trustee until each of such issue attains the age of twenty-one years but in the meantime the Trustee shall until such person attains that age pay to or use for such person the income from his or her share or so much thereof as the Trustee in its uncontrolled discretion may deem necessary or advisable and any income not so applied shall be accumulated and added to the capital of the share.

(c) If on the death of the said Dame Katherine N. Rodgers (Denckla) there be no issue in any degree of hers then alive then the Trustee shall divide the capital of the trust fund equally par souches among the descendants of the Donor then alive or if there be no such descendants to his abintestate heirs then alive in accordance with the laws of the Province of Quebec as then in force and as if the Donor had died intestate immediately after the death of the said Dame Katherine N. Rodgers (Denckla).

(d) No person being or claiming to be a child of Robert Newsom Donner (son of the Donor) born before the Eighth day of January Nineteen hundred and twenty-four or a descendant of any such person shall be included for the foregoing purposes as a descendant of the Donor.

(e) The expression "descendants of the Donor" wherever used in this deed shall include adopted children of the Donor and their descendants.

ARTICLE III. The Trustee is authorized and empowered to receive any additional property and securities which may from time to time be added to the trust fund by the Donor or any other person and to hold such property and securities in the same manner as is herein specified with respect to the property forming the original trust fund provided however that any property and securities which the Donor or any person contemplates adding to the trust fund shall be acceptable to the Trustee and/or approved in writing by the Advisers or Adviser of the Trustee.

ARTICLE IV. All the benefits conferred upon the beneficiaries hereunder are given upon the express condition that they shall at all times be exempt from seizure or [fol. 302] attachment and further that so long as any portion of the trust fund or the revenue therefrom is in the possession of the Trustee it shall be incapable of being assigned by any beneficiary in favour of any person other than the issue of such beneficiary or the descendants of the Donor but this shall not in any way affect the powers hereinafter conferred on the Trustee. None of the property hereby given shall either in capital or in revenue fall into or form part of any community of property which may subsist between such beneficiary and his or her consort and the share of any female beneficiary shall be paid to her on her own receipt without the written authorization or consent of her husband being required.

ARTICLE V. With the consent of the Trustee, ROBERT NEWSOM DONNER, son of the Donor, MRS. DORA DONNER IDE,

daughter of the Donor, and JOHN STEWART, son-in-law of the Donor, are appointed Advisers to the Trustee and are hereinafter referred to as "the Advisers" or if a corporation is appointed in their place such corporation is referred to as "the Adviser".

An Adviser may resign at any time without any judicial or other authorization being required and in the event of the death resignation incapacity or refusal to act of any individual Adviser the remaining or surviving Advisers or Adviser shall act.

The Advisers shall have power at any time to appoint other advisers or an adviser to take their place and they may appoint a corporation organized under the laws of any state, province or country as sole Adviser and any new Advisers or Adviser so appointed shall have the same powers duties and discretions in connection with the investment and management of the trust fund as are set forth in this deed and as if they or it had been originally named herein as such Advisers or Adviser.

If for any reason there is no Adviser acting at any time then the Trustee shall act alone in respect to the investment and management of the trust fund.

ARTICLE VI. The Trustee shall sell, exchange, invest and reinvest, borrow money with or without security, on the security of any of the trust assets or on any other security furnished by any other person, procure extensions of any such loans or pay any such loans in whole or in part out of the trust assets, borrow securities, loan money or securities, buy stocks, bonds or other securities outright, on margin or on any other terms, conditions, contracts or arrangements which it might make if acting in an individual capacity as shall be directed by the Advisers and shall in every respect follow their directions in respect to the investment and management of the trust fund, and no sales, exchanges, investments or reinvestments of the trust fund shall be made by the Trustee except on the directions of the Advisers given in writing or in the manner hereinafter provided. The Trustee shall be fully protected in respect of any sales, exchanges, investments and reinvestments; borrowings or

loans as shall be directed by the Advisers or Adviser and shall not be liable or responsible in any way for depreciation or loss incurred by reason of any such sales, exchanges, investments or reinvestments or borrowings or loans or for depreciation or loss incurred by reason of the retention of any investments authorized by the Advisers or Adviser or by reason of the retention of any securities added to the trust fund by the Donor or others or for any failure to invest any funds held by the Trustee uninvested. The Trustee shall not refuse to make any investment or reinvestment of the trust funds on the ground that such investment or reinvestment is unusual in nature or involving risk to the trust fund or of a character not proper for the investment of the trust funds or of a character not authorized by the laws of the Province of Quebec or the decisions of its courts or by the laws and decisions of any other province, estate or jurisdiction and shall not refuse to borrow money on such terms and conditions as may be directed by the Advisers or Adviser. The Trustee is authorized to accept and act on the instructions of the Advisers or Adviser given by telephone, telegraph, cable or by letter or written message and shall not be required to investigate the genuineness of such directions given by telephone, telegram or cable, or to obtain any written confirmation thereof.

The Trustee shall notify the Advisers or Adviser when capital funds are available for investment or when some action should in its opinion be taken in reference to any securities comprised in the trust fund.

ARTICLE VII. In the event that the Advisers shall fail to furnish the Trustee for a period of six months with directions for the investment or reinvestment of any uninvested funds, or shall fail to furnish the Trustee for a period of six months with instructions as to reinvestment of any securities, in respect to which in the opinion of the Trustee instructions should be furnished or if there is no Adviser [fol. 304] then acting the Trustee shall without any directions and on its own discretion invest and reinvest the trust fund or any part thereof in shares of stock (of any classification, including common stock) bonds, notes, securities or obligations of any corporation, whether now

or hereafter formed and wherever organized, in real property wherever situated in bonds or notes secured by mortgages on real estate wherever situated, in stocks, bonds, securities or obligations of any government, state, country or municipality, foreign and domestic, and such property, investments and securities of any class, kind or character which it may deem suitable for the trust, and in making such investments and reinvestments it shall not be restricted to property and securities of the character authorized for trust investments by the laws of the Province of Quebec or the decisions of its courts or by the laws and decisions of any other province, state or jurisdiction, and in making investments and reinvestments, the Trustee, when authorized to make investments, shall have the same powers as are herein set forth for investments made at the direction of the Advisers or Adviser including the power to borrow money, extend and pay loans, buy securities outright, on margin or any other terms, conditions, contracts, or arrangements which it might make if acting in an individual capacity and the Trustee shall not be in any way limited by the restrictions which arise out of the usual relationship of a Trustee and beneficiary.

ARTICLE VIII. Subject to the provisions hereinbefore set forth the Trustee is authorized and empowered to retain any and all investments authorized by the Advisers or Adviser and also such additional properties as may from time to time be added to the trust fund and subject also to the provisions hereinbefore set forth the Trustee is hereby given full power of sale and exchange in connection with any and all property and securities from time to time comprising the trust fund and shall have full power to sell, lease, mortgage or exchange any real estate forming part of the trust fund at such times and upon such terms and conditions as it may deem proper and to make, execute and deliver good and sufficient deeds, leases, mortgages or other instruments affecting such real estate. The Trustee may lease real estate for any period of time without regard to the duration of the trust or the term fixed by any statute and without authorization by any court.

[fol. 305] ARTICLE IX. Subject to the direction of the Advisers or Adviser or if there are no Advisers or Adviser acting then without such direction, the Trustee is authorized and empowered to vote in person or by proxy upon all stocks or other securities held by it; and in connection with the execution of proxies may delegate such of its discretionary powers as it may deem best; to exchange the securities of any corporation for other securities issued by such corporation or by any other corporation at such times and upon such terms and conditions as the Trustee shall deem proper; to consent to the reorganization, consolidation or merger of any corporation, or to the sale or lease of its property, or any portion thereof, to any person or corporation, or to the lease by any person or corporation of his or its property or any portion thereof, to such corporation, and upon any such reorganization, consolidation, merger, sale or lease, to exchange the securities held by it for the securities issued in connection therewith; to pay all such assessments, subscriptions and other sums of money as the Trustee may deem expedient for the protection of its interests as holder of any stocks, bonds or other securities of any corporation; to exercise any options appurtenant to any stocks, bonds or other securities for the conversion thereof into other securities, or to exercise any rights to subscribe for additional stocks, bonds or other securities and to make any and all necessary payments therefor; to retain the securities issued in connection with any such reorganization, consolidation, merger, sale or lease, or acquired as the result of the exercise of any options or rights to subscribe appurtenant to such securities whether or not such securities are of the class herein permitted for the investment of the trust fund; and generally to exercise with respect to all stocks, bonds or other investments held by the Trustee all such rights, powers and privileges as may be lawfully exercised by any person owning similar property in his own right.

ARTICLE X. No purchaser upon a sale by the Trustee shall be bound to see to the application of the purchase money arising therefrom or to inquire into the validity, expediency or propriety of any such sale. All contracts,

agreements and undertakings entered into by the Trustee on behalf of the trust shall be binding only on the trust fund and shall create no liability whatsoever on the part of the Trustee in respect to any of its assets which are held by it in an individual capacity and which are not part of the trust fund.

[fol. 306] ARTICLE XI. The Trustee shall be accountable only for reasonable diligence and the care of a prudent administrator in the management of the trust and shall not be liable for any act or default on the part of any attorney, auditor or broker or other person appointed by it hereunder but shall only be liable for its own acts and defaults.

ARTICLE XII. All cash dividends whether ordinary or extraordinary shall be treated by the Trustee as income, but all dividends declared by a Company and payable in stock of the same Company (ordinarily called "stock dividends") shall be added to the capital of the trust fund.

All dividends of every nature declared by corporations engaged in mining, the production of lumber, oil, gas, sulphur, the sale of real estate or other similar activities (commonly called "wasting asset corporations") or paid by a corporation holding stock of any such wasting asset corporation, or derived directly or indirectly from the operations of any such wasting asset corporation, shall be treated by the Trustee as income. Nothing in this Article, XII, contained shall be construed to apply to dividends paid or distributions made to the Trustee upon the liquidation or dissolution of a corporation.

ARTICLE XIII. All provisions of this agreement with respect to the investment and reinvestment of the trust fund and borrowing therefor shall also apply to the investment and reinvestment and borrowing with respect to any income which the Trustee is directed to accumulate.

ARTICLE XIV. The Trustee shall not be required to cause the securities or other property held by it to be registered or held in its name as Trustee but in its discretion may cause such securities or other property or any part thereof

to be registered or held in the name of its nominee or may retain such securities or other property unregistered and in bearer form without describing the trust, so that title to such securities or other property shall pass by the delivery thereof, but without thereby increasing or decreasing its liability as Trustee.

ARTICLE XV. In the event that bonds, notes or other evidences of indebtedness shall be received by the Trustee or purchased for the trust fund at a premium, the Trustee shall not set aside any part of the income thereof as a sinking fund to absorb such premium.

ARTICLE XVI. In any case in which the Trustee is required, pursuant to the provisions of this agreement, to divide the trust fund, or any portion thereof, into parts [fol. 307] or shares, or to distribute the same, it is authorized and empowered in its sole discretion to make such division or distribution in kind or in money, or partly in kind and partly in money, and for that purpose to allot specific securities or other property, real or personal, or undivided interests therein to any such part or share, and for the purpose of such allotment the determination of the Trustee concerning the propriety thereof and the value of the property and securities so allotted for the purpose of such division or distribution shall be binding and conclusive on all persons and corporations interested therein.

ARTICLE XVII. In the event that any of the transactions entered into by the Trustee shall result in any profit to or increase in the assets of the trust, all such increases for all purposes hereunder, shall be deemed to be principal or corpus of the trust and not income, except as is expressly otherwise provided in respect to dividends in Article XII. hereof.

ARTICLE XVIII. The Trustee is also authorized in the discharge of its duties to employ counsel and agents and to determine and pay them reasonable compensation, and it shall be entitled to reimbursement therefor and for such other expenses and charges as it may deem necessary and proper to incur out of the principal or income of the

trust as the Trustee shall determine. The Trustee may in the relation of these presents act on the opinion or advice of or information obtained from any lawyer, auditor, broker or other expert and shall not be responsible for any loss occasioned by acting or not acting thereon and shall be entitled to take legal or other advice and employ such assistance as may be necessary to the proper discharge of its duties, and to pay proper and reasonable compensation for such legal and other advice as an expense under the administration of the trust.

ARTICLE XIX. The Trustee shall furnish every three months statements of capital and income to the Advisers or Adviser then acting and also to any beneficiary hereunder who is an adult.

ARTICLE XX. The Trustee shall be entitled to receive as compensation for its services such fees as may be agreed upon from time to time between it and the Advisers or Adviser and such fees shall be payable out of capital or income as may be agreed upon.

[fol. 308.] The Advisers or the Adviser shall be entitled to receive as compensation the sum of Six hundred United States dollars per year payable out of the income from the trust fund to be divided equally among the Advisers if more than one is acting.

The values of such property and securities on the dates such property and securities are distributed by the Trustee shall be the basis for the computation of commissions on principal, and such commission shall be deducted from the principal of the trust fund as such property and securities are distributed.

ARTICLE XXI. This Trust has been accepted by the Trustee in the Province of Quebec and all questions pertaining to its construction shall be determined in accordance with the laws of that Province.

ARTICLE XXII. The appointment of Montreal Trust Company as Trustee is made subject to the condition that the Advisers or Adviser then in office shall have the right at any time by written instrument executed by them or it

and delivered to the Trustee to revoke its appointment or that of any successor trustee thereafter appointed and to name a new Trustee or Trustees in its place in the same manner as if the Trustee had resigned in accordance with the provisions of Article XXIII. of this instrument. In such instrument there shall be set forth the date on which the power of the trustee to act as trustee of the trust created by this instrument shall terminate, and such instrument shall be affective to terminate the power of the trustee in the same manner as if the trustee had voluntarily resigned as trustee of the trust created by this instrument pursuant to the provisions permitting such resignation and such trustee shall be deemed to have retired and ceased to act as trustee on the date set forth in said instrument.

ARTICLE XXIII. The Trustee may resign at any time and this without any judicial or other authorization being required.

The Advisers or Adviser then in office shall have the power and authority to designate and appoint by written instrument executed and acknowledged by them or it a trust company or other corporation having a place of business in or outside the Dominion of Canada as trustee under this trust in the place and stead of the original Trustee named herein and in like manner from time to [fol. 309] time to designate and appoint a successor trustee to fill any vacancy caused by the resignation of any trustee then acting. Any such successor Trustee appointed under the foregoing provisions upon the execution of its written consent accepting the office of trustee hereunder shall have all the powers, duties and discretion of the Trustee originally named herein. On the resignation of a Trustee or on the retirement of any Trustee in accordance with the foregoing provisions the Advisers or the Adviser then in office may release such resigning or retiring Trustee from all liability for the acts and doings of such Trustee hereunder and such release shall be binding upon all persons interested in this trust. No bond or other security shall be required of any trustee or successor trustee of this trust for the faithful performance of its duties hereunder.

ARTICLE XXIV. The Trustee is authorized to pay out of the trust fund or out of the income therefrom all taxes or other impositions which may be levied or imposed on the trust fund or any part thereof or on any beneficiary thereunder on account of his interest in the trust hereby created or which may be imposed on any Trustee hereunder on account of its holding such office.

ARTICLE XXV. The Trustee by joining in the execution of this instrument signifies its acceptance of the trust and it also accepts on behalf of the beneficiaries.

WHEREOF ACTE:

THUS DONE AND PASSED at the City of Montreal this Sixth day of August Nineteen hundred and forty and of record in the office of the undersigned Notary under the Number Eight thousand five hundred and fifty-five.

And after due reading hereof the parties signed in the presence of the said Notary.

(Signed) William H. Donner

MONTREAL TRUST COMPANY,
F. Donaldson
Vice-President &
General Manger

J. C. Kelly
Assistant General
Manger

H. B. McLEAN, N. P.

(Seal of Montreal
Trust Company)

[fol. 310] I hereby certify this to be a true copy of minute Number 8555 forming part of the records of HERBERT BAYNE McLEAN of the City of Montreal, Notary, whose mandatory I am for the period beginning on the Fourth day of January Nineteen hundred and forty and terminating on the Thirty-first day of December Nineteen hun-

This is Schedule "A" referred to in the Deed of Donation by William Henry Donner to Montreal Trust Company (Trustee) executed before H. B. McLean, Notary, on the Sixth day of August Nineteen hundred and forty and thereto annexed signed for identification by the parties thereto and the undersigned Notary after having been acknowledged to be true and annexed to Number 8555 of his original Minutes.

FOR IDENTIFICATION:

(Signed) William H. Donner

MONTREAL TRUST COMPANY,

" F. Donaldson

Vice-President &
General Manager

" J. C. Kelly

Assistant General
Manager

" H. B. McLEAN, N. P.

A true copy.

/s/ H. P. HONEY, N. P.

[fol. 312]

ATTACHMENT TO EXHIBIT, "C"

October 11, 1940

Montreal Trust Company

511 Place d'Armes

Montreal, P. Q.

RE: KATHERINE N. RODGERS DENCKLA TRUST

Dear Sirs:

Under Article V of the Deed of Donation by William Henry Donner to your Company as Trustee setting up a Trust for Katherine N. Rodgers Denckla and executed before H. B. McLean, Notary, on the Sixth day of August,

Nineteen hundred and forty, under the No. 8555 of his original minutes the undersigned were appointed Advisers to the Trustee and it was provided that we might resign at any time and that we should have power at any time to appoint other Advisers or an Adviser to take our place and that we might appoint a Corporation as sole Adviser.

In exercise of the power conferred upon us under the said Deed of Donation, we hereby notify you that we have resigned the office of Advisers under the said Trust and we appoint in our place as sole Adviser to the said Trust, Donner Estates, Incorporated, a corporation organized under the laws of the Commonwealth of Pennsylvania.

You will, therefore, in future be guided by the advice of the said Donner Estates, Incorporated as Adviser.

Very truly yours,

/s/ Robert N. Donner

/s/ John Stewart

/s/ Dora Donner Ide

[fol. 313] ATTACHMENT TO EXHIBIT "C"

BEFORE Mtre. HERBERT BAYNE McLEAN the undersigned
Notary for the Province of Quebec practising
at the City of Montreal;

APPEARED:

WILLIAM HENRY DONNER of Montreux in
Switzerland, Retired Manufacturer, presently in the City
of Montreal;

Hereinafter called "the Donor"

PARTY OF THE FIRST PART:

AND

MONTREAL TRUST COMPANY a corporation duly incorporated and having its head office at the City of Montreal herein acting and represented by CHARLES

D. CORNELL and JAMES PATON ANGUS, two of its Assistant General-Managers, both of the City of Montreal and hereunto duly authorized as they declare;

Hereinafter called "the Trustee"

PARTY OF THE SECOND PART:

WHO DECLARED UNTO THE UNDERSIGNED NOTARY AS FOLLOWS:

That by Deed of Donation executed before H. B. McLean Notary on the Sixth day of August Nineteen hundred and forty under the Number 8555 of the original minutes of the said Notary and registered in the Registry Office for the Registration Division of Montreal under the Number 482671 (hereinafter referred to as the "original Donation") the Donor conveyed to the Trustee by gift inter vivos and irrevocable for the benefit of his adopted daughter DAME KATHERINE N. RODGERS of Villa Nova in the State of Pennsylvania one of the United States of America formerly wife of C. PAUL DENCKLA and her issue in trust the securities set out in Schedule "A" annexed to the said deed to be held by it upon the trusts and for the purposes therein set forth;

That under Article III. of the original Donation the Trustee was authorized and empowered to receive any additional property and securities which might from time to time be added to the trust fund by the Donor or any other person and to hold such property and securities in the same manner as was therein specified with respect to the property forming the original trust fund provided however that any property and securities which the Donor or any person contemplated adding to the trust fund should be acceptable to the Trustee and/or approved in [fol. 314] writing by the Advisers or Adviser of the Trustee;

That the Donor wishes now to convey to the Trustee in the same way and for the same purposes certain other securities;

NOW THEREFORE THE PARTIES HAVE AGREED AND THESE PRESENTS AND I THE SAID NOTARY WITNESS:

1. The Donor hath conveyed to the Trustee by gift inter vivos and irrevocable for the benefit of the said DAME KATHERINE N. RODGERS (DENCKLA) and her issue the securities set out in Schedule "A" hereto annexed and signed for identification by the parties hereto and the undersigned Notary.

2. The Trustee acknowledges the receipt of the said securities which it undertakes to hold in trust always upon the trusts and for the purposes set out in the original Donation and in the same manner as if the securities set out in Schedule "A" annexed to this deed had been included in the original Donation.

3. The Trustee by joining in the execution of this deed signifies acceptance of the trust and it also accepts this additional donation on behalf of the beneficiaries.

WHEREOF ACTE :

THUS DONE AND PASSED at the City of Montreal this Twentieth day of June Nineteen hundred and forty-one and of record in the office of the undersigned Notary under the Number Eight thousand eight hundred and ninety-three.

And after due reading hereof the parties signed in the presence of the said Notary.

(Signed) W. H. Donner

" MONTREAL TRUST COMPANY,

C. D. Cornell,

Assistant General Manager

J. P. Angus,

Assistant General Manager

" H. B. McLEAN, N. P.

A true copy of the original hereof remaining of record in my office.

/s/ H. B. McLean, N. P.

SCHEDULE "A"KATHERINE N. RODGERS DONORLA TRUSTBONDS:

- \$10,000. Dominion of Canada 4% due 1st October 1960
- \$10,000. Canadian National (West Indies) Steam Ship Limited 5% due 1st March 1955
- \$15,000. City of Edmonton 5-4½% due 1st February 1967
- \$20,000. Harbour Commissioners of Montreal 5% due 1st November 1969
- \$15,000. Province of Manitoba 5% due 2nd December 1959
- \$10,000. City of Montreal 4½% due 1st April 1951
- \$10,000. Province of New Brunswick 3% due 1st July 1944
- \$10,000. Province of Nova Scotia 4½% due 15th November 1948
- \$15,000. Province of Ontario 5% due 2nd December 1960
- \$20,000. Saguenay Power Company Ltd. 4¼% due 1st April 1966
- \$10,000. Shawinigan Water & Power Company 4½% due 1st October 1967
- \$10,000. City of Vancouver 5% due 1st June 1944

This is Schedule "A" referred to in the Deed of Donation by William Henry Donner to Montreal Trust Company (Trustee) executed before H. B. McLean, Notary, on the Twentieth day of June Nineteen hundred and forty-one and thereto annexed signed for identification by the parties thereto and the undersigned Notary after having been acknowledged to be true and annexed to Number 8893 of his original Minutes.

FOR IDENTIFICATION:

(Signed) W. H. Donner

MONTREAL TRUST COMPANY,C. D. Cornell,
Assistant General ManagerJ. P. Angus,
Assistant General ManagerH. B. McLEAN, N. P.A true copy./s/ H. B. McLean, N. P.

[fol. 316] ATTACHMENT TO EXHIBIT "C"

Philadelphia, Pa.

June 23, 1941.

Montreal Trust Company,
511 Place d'Armes,
Montreal, P. Q.

Dear Sirs:

Re: WILLIAM H. DONNER (#8555)—
KATHERINE N. RODGERS DENCKLA TRUST

Under the provisions of Article XXII of the Deed of Donation by William Henry Donner to your Company as Trustee setting up a Trust for Katherine N. Rodgers Denckla, which Deed was executed before Herbert Bayne McLean, Notary, for the Province of Quebec practising in the City of Montreal, on the 6th day of August, 1940, under the number 8555 of his original Minutes, it is provided that the Advisers or Adviser then in office shall have the right at any time by written instrument executed by them or it and delivered to the Trustee to revoke its appointment or that of any successor Trustee thereafter appointed and to name a new Trustee or Trustees in its place in the same manner as if the Trustee had resigned in accordance with the provisions of Article XXIII of said Deed.

Acting pursuant to the power and authority vested in this Corporation, the sole Adviser now acting hereunder, having been duly appointed to office by the Advisers originally named in the Deed, who resigned such office on the 11th of October, 1940, having named this Corporation in their place, we hereby revoke the appointment of your Company as Trustee and designate DELAWARE TRUST COMPANY, a corporation of the State of Delaware, of Wilmington, Delaware, U. S. A., as successor Trustee in place and stead of your Company, and your power to act under the aforesaid Deed of Donation shall terminate June 26, 1941, as of which date the successor Trustee has agreed and consented to accept the office of Trustee.

Your accounts are to be submitted to this Corporation as soon as possible after the effective date of the revocation of your appointment, in order that we, as Adviser, may grant to you, as Trustee, the release provided for under the provisions of Article XXIII.

[fol. 317] We, of course, understand that a certain amount of time will elapse from June 26, 1941, the effective date of the revocation of your appointment, and the time you are able to obtain the necessary releases from us, the Dominion Income Tax Authorities, and from the Foreign Exchange Control Board and the Custodian at Ottawa, and you will receive authority from DELAWARE TRUST COMPANY, a corporation of the State of Delaware, of Wilmington, Delaware, U. S. A., as successor Trustee, to act as its Agent from the date it assumes that office, pending the time all such formalities have been complied with enabling you to turn over the securities and cash comprising the Trust Fund and the income, if any, accumulated therefrom, and your appointment as Agent to the successor Trustee has our approval.

Very truly yours,

DONNER ESTATES, INC.

/s/ John Stewart
President

/s/ John T. Lyons
Vice-President

[fol. 318]

ATTACHMENT TO EXHIBIT "C"

Philadelphia, Pa.

June 23, 1941.

Delaware Trust Company,
Wilmington,
Delaware.

Dear Sirs:

Re: WILLIAM H. DONNER (#8555)—

KATHERINE N. RODGERS DENCKLA TRUST

This Corporation is now acting as Sole Adviser under a certain Deed of Donation by William Henry Donner to Montreal Trust Company, Montreal, as Trustee, setting up a Trust for Katherine N. Rodgers Denckla, which Deed was executed before Herbert Bayne McLean, Notary, for the Province of Quebec, practising in the City of Montreal, on the 6th day of August, 1940, under the number 8555 of his original Minutes. The advisers named in the said Deed resigned that office on the 11th day of October, 1940, and appointed this Corporation as Sole Adviser to said Trust in their place and stead.

Pursuant to the power and authority now vested in this Corporation as Adviser under the provisions of the aforesaid Deed of Donation, it has been decided by us to revoke the appointment of Montreal Trust Company as Trustee and in its place and stead we hereby designate and appoint you, Delaware Trust Company, a corporation of the State of Delaware, of Wilmington, Delaware, as successor Trustee. Montreal Trust Company's power as Trustee is to cease and terminate as of June 26, 1941, the effective date of the revocation of its appointment and removal and as from which date it is our wish that you shall consent to act as successor Trustee, assuming the powers, duties and discretion conferred on the Trustee originally named under said Deed.

Very truly yours,

DONNER ESTATES, INC.

/s/ John Stewart
President

/s/ John T. Lyons
Vice-President

Philadelphia, Pa.

June 23, 1941.

Delaware Trust Company,
Wilmington,
Delaware.

Dear Sirs:

Re: WILLIAM H. DONNER (#8555)—
KATHERINE N. RODGERS DENCKLA TRUST

Further to our letter of the 23rd instant, whereby we appointed your Company as successor Trustee under that certain Deed of Donation by William Henry Donner to Montreal Trust Company, Montreal, as Trustee, setting up a Trust for Katherine N. Rodgers Denckla, which Deed was executed before Herbert Bayne McLean, Notary, on the 6th day of August, 1940, under the number 8555 of his original Minutes.

As the original Trustee is to submit, as soon as possible after the effective date of the revocation of its appointment, its accounts to us in order that we may grant to it release from all liability and as it is necessary for the original Trustee also to obtain releases from the Dominion Income Tax Authorities and from the Foreign Exchange Control Board and Custodian at Ottawa, Canada, it will be unable to turn over to you until some time after the date upon which you assume the office of successor Trustee, the securities and cash comprising the Trust Fund and income, if any, accumulated therefrom.

We would ask you, therefore, to kindly accept this letter as your authority to appoint Montreal Trust Company as your Agent, in order that they may continue to administer the Trust on your behalf and subject to your instructions, pending such time as the requisite releases are obtained and Montreal Trust Company is in a position to release

and to make over to you the Trust Fund and any accumulated income.

Very truly yours,

DONNER ESTATES, INC.

/s/ John Stewart
President

/s/ John T. Lyons
Vice-President

[fol. 320] ATTACHMENT TO EXHIBIT "C"

Wilmington, Delaware

June 26, 1941.

Donner Estates, Inc.
Lincoln-Liberty Building,
Philadelphia, Pa.

Dear Sirs:

We hereby accept, as of this date, the appointment of and consent to act as successor Trustee to Montreal Trust Company, the Trustee originally named in the Deed of Donation above referred to.

Yours faithfully,

DELAWARE TRUST COMPANY

By—

/s/ E. M. Taylor
Vice-President

Attest—

/s/ R. U. Altemus
Secretary.

[fol. 321]

ATTACHMENT TO EXHIBIT "C"

Wilmington, Delaware

June 26, 1941.

Montreal Trust Company,
511 Place d'Armes,
Montreal, P. Q.

Dear Sirs:—

Re: WILLIAM H. DONNER (#8555)—
KATHERINE N. RODGERS DENCKLA TRUST

As you are aware, this Company has agreed to accept the appointment and consented to act as successor Trustee under that certain Deed of Donation by William Henry Donner to your Company, as Trustee, setting up a Trust for Katherine N. Rodgers Denckla, which Deed was executed before Herbert Bayne McLean, Notary, on the 6th day of August, 1940, under the number 8555 of his original Minutes, which office is to be assumed by us as from June 26, 1941.

We understand that pending your obtaining certain necessary releases you will be unable to turn over to us the Trust Fund and the income, if any, to be derived therefrom, and in order to facilitate the administration of the Trust until such time as you turn over to us the Trust Fund and the income, we hereby name, with the approval of Donner Estates, Inc., your Company as our Agent, and we will furnish you with instructions from time to time regarding the operation of the Trust until you are in a position to make over and deliver to us the Trust Fund and income.

Yours faithfully,

DELAWARE TRUST COMPANY

By—

/s/ E. M. Taylor
Vice-President

Attest—

/s/ R. U. Altemus
Secretary.

[fol. 322] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 323] ATTACHMENT TO STIPULATION

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 531

ELIZABETH DONNER HANSON, as Executrix and Trustee
under the Last Will of Dora Browning Donner, deceased,
Plaintiff,

v.

WILMINGTON TRUST COMPANY, et al., Defendants.

PROVINCE OF QUEBEC,
DISTRICT OF MONTREAL, ss.:

I, George Ainslie Goad, of the Town of Montreal West in the Province of Quebec, being duly sworn, do depose and say:

1. That I am an Assistant General Manager of the Montreal Trust Company having been employed by it since the 2nd January, 1929.

2. That on December 3rd, 1949, I met with Dora Browning Donner, Dorothy Doyle and Lydia MacFarland at the apartment of Dora Browning Donner at the Rittenhouse Plaza in Philadelphia, Pennsylvania. At that time in my presence and in the presence of Dorothy Doyle and Lydia MacFarland, Dora Browning Donner signed a Last Will and Testament and also an instrument which I understood to be an instrument exercising a power of appointment given to her in a Trust Agreement dated March 25th, 1935 between Wilmington Trust Company, as Trustee, and Dora Browning Donner. The said Last Will and Testament was signed by Dorothy Doyle and Lydia MacFarland as subscribing witnesses in the presence of each other, in my presence and in the presence of Dora Browning Donner. The said instru-

ment exercising the power of appointment given in the Trust Agreement dated March 25th, 1935 was signed by Dorothy Doyle as subscribing witness in my presence and in the presence of Dora Browning Donner. Attached hereto [fol. 324] are copies of the said Last Will and Testament and the said instrument exercising the power of appointment executed on December 3rd, 1949 by Dora Browning Donner and marked for identification Exhibits A and B, which are initialled by me for identification. I have examined these copies and to the best of my knowledge and belief they are respectively true and correct copies of said Last Will and Testament and said instrument.

3. That on July 7th, 1950 I met with Dora Browning Donner and Grace E. Stalker at the Windsor Hotel in Montreal, Canada, and at said time Dora Browning Donner executed in my presence and in the presence of Grace E. Stalker a further instrument which I understood to be an instrument further exercising the power of appointment given to her under a Trust Agreement dated March 25th, 1935 between Wilmington Trust Company, Trustee, and Dora Browning Donner, and in my presence and in the presence of Dora Browning Donner, Grace E. Stalker signed her name thereto as a subscribing witness. A true and correct copy of such instrument is attached hereto and marked Exhibit C, which is initialled by me for identification.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the "Canada Evidence Act".

And I Have Signed.

G. A. Goad

Sworn to before me at Montreal, Quebec, this tenth day of November, 1954.

Matthew C. Holt, Commissioner of the Superior Court for the District of Montreal.

[fol. 324A] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 325] ATTACHMENT TO STIPULATION

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 531

ELIZABETH DONNER HANSON, as Executrix and Trustee
under the Last Will of Dora Browning Donner, deceased,
Plaintiff,

v.

WILMINGTON TRUST COMPANY, et al., Defendants.

COUNTY OF PHILADELPHIA,
COMMONWEALTH OF PENNSYLVANIA, ss.:

Be It Remembered that on this 12th day of November, 1954, personally appeared before me, the undersigned, a Notary Public for the State and County aforesaid, C. Kenneth Baxter, who being by me duly sworn did depose and say:

[fol. 329] 10. At no time did Dora Browning Donner either directly or indirectly attempt to direct, suggest or consult with the advisors under paragraph 5 of the trust agreement dated March 25, 1935 with respect to any phase of their duties as such advisors, but on the contrary, such advisors performed their duties as advisors solely in accordance with their own best independent judgments. In the performance of their duties as advisors the advisors instructed the Wilmington Trust Company as trustee to purchase, sell or otherwise deal with the securities held in trust without ever advising Dora Browning Donner with respect thereto either before or after action was taken by the Wilmington Trust Company or at any other time.

11. At the time of the appointment dated December 3, 1949 under the agreement of March 25, 1935 between Dora

Browning Donner and Wilmington Trust Company as trustee, and at all times thereafter, Katherine N. R. Denckla and Dorothy B. R. Stewart and their respective issue had substantial incomes from various other trusts.

12. During 1940 and 1941, William H. Donner created trusts for the benefit of each of his then living grandchildren, including then living children of his legally adopted daughters Katherine N. Rodgers Denckla and Dorothy B. Rodgers Stewart. The grandchildren so provided for included Paula Browning Denckla, William Donner Denckla, Dora Stewart Lewis, Mary Washington Stewart Borie, William Donner Roosevelt and Curtin Winsor, Jr. Neither Donner Hanson nor Joseph Donner Winsor had been born when said trusts were created and as a result no provision was made for them under said trusts. Subsequently Donner Hanson and Joseph Donner Winsor acquired beneficial interests under other trusts which were relatively small in value as compared with the aforementioned 1940 and 1941 trusts. On December 3, 1949 [fol. 330] and at all times until the death of Dora Browning Donner the value of the corpus of each of the respective trusts under which the grandchildren (other than Joseph Donner Winsor and Donner Hanson) of William H. Donner had beneficial interests exceeded by more than \$200,000 the corpus of each of the respective trusts under which Donner Hanson and Joseph Donner Winsor had beneficial interests; and the corpus of the trusts for Joseph Donner Winsor and Donner Hanson, when increased by the assets appointed to them by the instruments dated December 3, 1949 and July 7, 1950 exercising the power of appointment granted to Dora Browning Donner by the agreement dated March 25, 1935 between her and the Wilmington Trust Company as trustee, are each of a substantially lesser value than the corpus of each of the trusts for the other grandchildren.

C. Kenneth Baxter

Sworn to and subscribed before me the day and year first above written.

Miriam V. Moyer, Notary Public.

Notary Public. My Commission Expires January 29, 1955. (SEAL)

[fol. 331] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 332] ATTACHMENT TO STIPULATION
1133.9

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

PETITION FOR ORDER AUTHORIZING TRANSFER OF MONEY
TO FOREIGN TRUSTEE

IN THE MATTER OF DOROTHY B. R. STEWART,
an insane person.

To the Chancellor of the State of Delaware:

The petition of Elwyn L. Middleton respectfully represents;

(1) Your petitioner was appointed guardian for Dorothy B. R. Stewart, who is a resident citizen of Palm Beach County, State of Florida, by decree of the County Judges' Court in and for Palm Beach County, Florida, dated December 22, 1952, to succeed E. Harris Drew who had theretofore been appointed her guardian by decree of said Court. The said Dorothy B. R. Stewart has been previously adjudged to be incompetent because of paranoid schizophrenia. A copy of said order dated December 22, 1952, is attached hereto and filed herewith. The said County Judges' Court in and for Palm Beach County, Florida, has, under the laws of the State of Florida, jurisdiction and power to appoint guardians for insane or incompetent citizens within said county.

(2) Delaware Trust Company, a corporation of the State of Delaware, is trustee under agreement of trust dated June 1, 1943, entered into by and between Dorothy B. R. Stewart and Delaware Trust Company, designated as Trust No. 8000, which is fully revocable by the said Dorothy B. R. Stewart, and from which the said Dorothy B. R. Stewart may reasonably anticipate an annual income of approximately Fourteen Thousand Dollars (\$14,000.00).

Delaware Trust Company is also the trustee under an agreement of trust dated August 19, 1940, created by William H. Donner, designated as Trust No. 8553, which is irrevocable and under the terms of which Dorothy B. R. Stewart is entitled to receive an annual income for the term of her life. Wilmington Trust Company, a corporation of the State of Delaware, is the trustee under an agreement of trust dated March 19, 1932, created by William H. Donner, designated as Trust No. 1778, which is irrevocable, and under the terms of which Dorothy B. R. Stewart is entitled to receive the annual income for the term of her life. The anticipated annual income from the two latter trusts is approximately Sixty-six Thousand Dollars (\$66,000.00) a year. A description of the property of the said Dorothy B. R. Stewart is included in the inventory filed by a former guardian in the County Judges Court in and for Palm Beach County, a certified copy of which is attached to his petition filed in this Court on May 11, 1949.

(3) In compliance with the provisions of 3097 of the Revised Code of Delaware (1935), your petitioner, Elwyn L. Middleton, files herewith a certificate showing his appointment as guardian for Dorothy B. R. Stewart, according to the laws of the State of Florida, and under the seal of the County Judges Court in and for Palm Beach County, Florida, which certificate further shows that your petitioner is invested with the care and management of the Estate of Dorothy B. Stewart, with authority to receive and liability to account for said estate, and that your petitioner has duly qualified by giving security in accordance with the decree of his appointment in the sum of One Hundred Thousand Dollars (\$100,000.00), and your petitioner avers that said sum of One Hundred Thousand Dollars (\$100,000.00), the principal amount of his said bond, is at least equal to the whole amount of the property owned by the said Dorothy B. R. Stewart, excepting real estate and tangible personal property outside the State of Delaware, [fol. 334] and the revocable trust which the Delaware Trust Company is trustee, as to the latter of which your petitioner does hereby consent to the entry of an order by this Court directing Delaware Trust Company, as trustee, not to pay over any of the principal of said revocable trust to

Sworn to and subscribed before me the day and year first above written.

Edna H. Gerdine, Notary Public.

Edna H. Gerdine, Notary Public. My Commission
Expires March 6, 1957:

(SEAL)

[fol. 360] Clerk's Certificate to foregoing papers omitted in printing.

[fol. 362] AFFIDAVIT OF SERVICE (omitted in printing).

[fol. 363] [File endorsement omitted]

[fol. 364] SUPREME COURT OF THE UNITED STATES

No. 977, October Term, 1956

DORA STEWART LEWIS, MARY WASHINGTON STEWART BORIE
AND PAULA BROWNING DENCKLA, Petitioners,

v.

ELIZABETH DONNER HANSON, as Executrix and Trustee
Under the Last Will of Dora Browning Donner, De-
ceased, et al.

ORDER ALLOWING CERTIORARI—June 17, 1957

The petition herein for a writ of certiorari to the Supreme Court of the State of Delaware is granted. The case is consolidated with No. 918 and a total of two hours allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

your petitioner without the further order of this Court. Your petitioner also files herewith a copy of the final account of the said E. Harris Drew, as guardian, and a copy of the decree of the County Judges Court in and for Palm Beach County, Florida, dated January 29, 1953, approving said account and discharging the said E. Harris Drew from further duties and liabilities as Guardian of the property of the said Dorothy B. R. Stewart.

Wherefore, your petitioner prays that this honorable Court may enter an order authorizing Delaware Trust Company and Wilmington Trust Company, trustees under the respective trusts hereinbefore mentioned, to assign, transfer and pay over to your petitioner, as guardian, all of the income payable unto the said Dorothy B. R. Stewart from time to time under the terms of said trust, and likewise authorizing your petitioner as guardian to receive the same.

And your petitioner will ever pray, etc.

Elwyn L. Middleton, Guardian for Dorothy B. R. Stewart, an insane person.

Wm. H. Foulk, William Duffy, Jr., Attorneys for Petitioner.

STATE OF FLORIDA,
PALM BEACH COUNTY, ss.:

Be It Remembered that on this 18th day of March, A.D. 1953, personally came before me, the subscriber, a Notary [fol. 335] Public in and for the County and State aforesaid, Elwyn L. Middleton, guardian for Dorothy B. R. Stewart, an insane person, who being by me duly qualified according to law did depose and say that he is the petitioner within named; that what is set forth in the foregoing petition is true so far as it concerns his own act and deed, and that he believes that what is therein set forth to be true so far as it relates to the acts or deeds of any other person or persons.

Elwyn L. Middleton, Guardian for Dorothy B. R. Stewart, an insane person.

Sworn to and subscribed before me the day and year first above written.

Mrs. Bertie M. Herring, Notary Public, State of Florida,
at Large.

Bertie M. Herring, Notary Public.

Notary Public, State of Florida at Large. My Commission expires Feb. 13, 1956. Bonded by American Surety Co. of N. Y.

[fol. 343]

ATTACHMENT TO PETITION OF
ELWYN L. MIDDLETON

1133.9

PROBATE ORDER

B 75 P 147

IN THE COURT OF THE COUNTY JUDGE, IN AND FOR
PALM BEACH COUNTY, FLORIDA

No. 8293

In the Matter of:

THE GUARDIANSHIP OF DOROTHY B. R. STEWART,
An Incompetent.

ORDER ACCEPTING RESIGNATION OF GUARDIAN AND
APPOINTING SUCCESSOR GUARDIAN

This cause came on to be heard upon the resignation of E. Harris Drew, as one of the guardians of the person and the guardian of the property of the above incompetent, containing application for the appointment of a successor guardian, the final return of said E. Harris Drew, as guardian, and the application of said guardian for final compen-

sation, after due notice, and the court being advised in the premises; it is thereupon

Ordered and Adjudged that the final return of E. Harris Drew, as one of the guardians of the person and as the guardian of the property of the above incompetent, is hereby approved and his resignation accepted. Upon E. Harris Drew transferring to his successor, when qualified, all of the assets of the ward now in his hands, said E. Harris Drew shall be fully discharged as guardian of the person and property and Letters of Discharge shall issue; the sum of \$4000.00 is hereby found and determined to be reasonable final compensation for said guardian and said guardian is hereby authorized to pay said amount to himself from the funds in his hands prior to transfer of the assets of the ward to the successor guardian.

It Is Further Ordered and Adjudged that Elwyn L. Middleton be, and he hereby is, appointed as guardian of the property of the above incompetent, and upon taking [fol. 344] the oath and providing proper bond in the sum of \$100,000.00, to be approved by the Court, Letters of Guardianship shall issue.

It Is Further Ordered and Adjudged that all previous orders concerning the management of the ward's property shall remain in full force and effect, all subject to the further order of the court.

Done and Ordered at West Palm Beach, Florida, this 22nd day of December, 1952.

Seal, County Judge, Palm Beach County, State of Florida.

Richard P. Robbins, County Judge.

[fol. 345] ATTACHMENT TO PETITION OF
ELWYN L. MIDDLETON

Drew's Form D.H.R.—8
GUARDIANSHIP

PROBATE ORDER

B 75 P 149

IN THE COUNTY JUDGE'S COURT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

No. 8293

IN RE: GUARDIANSHIP OF DOROTHY B. R. STEWART;
An Incompetent.

LETTERS OF GUARDIANSHIP (744.40)

Whereas, Elwyn L. Middleton was appointed guardian of the Property² of Dorothy B. R. Stewart by the undersigned county judge on December 22nd, 1952; and

Whereas, the said guardian has taken oath and given bond, as required by law, and is entitled to letters of guardianship;

Now, Therefore, I, Richard P. Robbins, county judge in and for the county of Palm Beach, state of Florida, by virtue of the power and authority by law in me vested, do hereby declare the said Elwyn L. Middleton to be duly qualified under the laws of the state of Florida to act as guardian of the property,² of Dorothy B. R. Stewart, incompetent because of mental incompetence with full power to ask, demand, sue for, recover, and receive any assets belonging to said incompetent; to pay the debts of said incompetent, if any, so far as the assets of her estate will permit and the law direct, and to protect the interests of said incompetent and her estate according to law, and to render due accounts of his guardianship.

In witness whereof, I hereunto set my hand and affix the seal of said court, at West Palm Beach, Florida, this 22nd day of December, 1952.

Richard P. Robbins, County Judge.

(SEAL)

I hereby certify that, on December 22nd, 1952, the foregoing letters of guardianship were recorded, as required by law.

Richard P. Robbins, County Judge.

(SEAL)

[fol. 346]

By Ruby M. Ball, Clerk.

¹ Letters of guardianship are not necessary to the validity of the order appointing a guardian. F.S.A. 744.40.

² Person or property, or both.

³ Minority or mental or physical incompetency.

147

[fol. 347]

ATTACHMENT TO PETITION OF
ELWYN L. MIDDLETON

Drew's Form D.H.R.—66
GUARDIANSHIP

IN THE COUNTY JUDGE'S COURT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

No. 8293

IN RE: GUARDIANSHIP OF DOROTHY B. R. STEWART,
An Incompetent.

LETTERS OF DISCHARGE¹ (746.15)

Whereas, E. Harris Drew, as guardian of the property of Dorothy B. R. Stewart, has filed his petition for final discharge and his final returns with supporting receipts

and vouchers, and has asked the court for a discharge as such guardian; and

Whereas, it appears to the court that the said E. Harris Drew has faithfully acted as such guardian, has made disposition of the assets of the ward according to law and has rendered true accounts of his guardianship, and that an order of final discharge has been entered;

Now, therefore, I, Richard P. Robbins, county judge in and for said county, by virtue of the power and authority vested in me by law, do hereby declare the said E. Harris Drew duly discharged under the laws of the state of Florida as guardian of the property² of Dorothy B. R. Stewart,

In witness whereof, I hereunto set my hand and affix the seal of said court, at West Palm Beach, Florida, January 29th, 1953.

Richard P. Robbins, County Judge.

(SEAL)

I hereby certify that, on January 29th, 1953, the foregoing letters of discharge were recorded, as required by law.

Richard P. Robbins, County Judge.

(SEAL)

By Ruby M. Ball, Clerk.

¹ Letters of discharge are not necessary to the validity of a discharge. F.S.A. 746.15.

² And of the person, if that is the case.

[fol. 348]

ATTACHMENT TO PETITION OF
ELWYN L. MIDDLETON

IN THE COUNTY JUDGE'S COURT OF
PALM BEACH COUNTY, FLORIDA

I, the undersigned, Clerk of the County Judge's Court in and for Palm Beach County, Florida, the same being a Court of Record and having probate jurisdiction, Do Hereby Certify that the foregoing is a true and correct

photostatic copy of Final Return, filed on the 22nd day of December, 1952, recorded in Probate Annual Book 18, Page 434; Order Accepting Resignation of Guardian and Appointing Successor Guardian, dated and filed for record on the 22nd day of December, 1952, recorded in Probate Order Book 75, Page 147; Letters of Guardianship, issued to Elwyn L. Middleton on the 22nd day of December, 1952, at West Palm Beach, Florida, filed for record on the 22nd day of December, 1952, recorded in Probate Order Book 75, Page 149; Letters of Discharge, issued to F. Harris Drew on the 29th day of January, 1953, at West Palm Beach, Florida, filed for record in this Court on the 29th day of January, 1953, recorded in Probate Order Book 75, Page 502, in the matter of the estate of Dorothy B. R. Stewart, Incompetent.

I further certify that on this date said Letters issued to Middleton are in full force and effect as the same appears from the records and files of the County Judge's Office of Palm Beach County, Florida,

In Testimony Whereof, I have hereunto set my hand and seal of said Court at West Palm Beach, Florida, this the 19th day of March, A. D. 1953.

/s/ Ruby M. Ball, Clerk of the County Judge's Court
of Palm Beach County, Florida.

(SEAL)

[fol. 349] ATTACHMENT TO STIPULATION

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,
NEW CASTLE COUNTY, ss:.

I, Robert A. Stevenson, Register of the Court of Chancery of the State of Delaware, in and for New Castle County, do hereby certify that the foregoing is a true and correct copy of the Petition for Order Authorizing Transfer of Money to Foreign Trustee filed in this Court on the

27th day of March, A. D. 1953 and Certifications annexed thereto showing the Appointment of Elwyn L. Middleton Guardian for Dorothy B. R. Stewart under the seal of the County Judges Court in and for Palm Beach County, Florida, and showing that Elwyn L. Middleton is invested with the care and management of the Estate of Dorothy B. R. Stewart, a mentally ill person, as the same is on file and remains of record in this Court.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court at Wilmington, this 5th day of October, A. D. 1955.

Robert A. Stevenson, Register in Chancery:

(SEAL)

[fol. 350]

ATTACHMENT TO STIPULATION

1133.9

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN THE MATTER OF DOROTHY B. R. STEWART,
an insane person.

And Now, to wit, this 27th day of March, A.D. 1953, the petition of Elwyn L. Middleton, Guardian, having been presented, and it appearing that Dorothy B. R. Stewart is a resident of Palm Beach County, Florida, and is an insane person; that Delaware Trust Company and Wilmington Trust Company, both corporations of the State of Delaware, hold in trust certain property from which the income is payable to the said Dorothy B. R. Stewart; that Delaware Trust Company further holds in a revocable trust certain property of the said Dorothy B. R. Stewart, and that the said Elwyn L. Middleton, Guardian, consents to the entry of an order by this Court directing the said Delaware Trust Company as Trustee not to pay over any of the principal of said revocable trust to him without the further order of this Court; that the said Elwyn L. Middleton has been appointed as the Guardian for the said Dorothy B. R. Stewart, an insane person, to succeed E.

Harris Drew by the County Judges Court in and for Palm Beach County, Florida, which Court under the laws of Florida has jurisdiction and power to appoint guardians for insane or incompetent persons within said Palm Beach County, and that the said Guardian is by the laws of the State of Florida invested with the care and management of the estate of the said Dorothy B. R. Stewart, with authority to receive and liability to account for the same; and that the said Elwyn L. Middleton is entitled to receive from said Delaware Trust Company and Wilmington Trust Company, trustees as aforesaid, all of the income from the trusts mentioned and referred to in said petition, amounting to approximately Eighty Thousand Dollars (\$80,000.00) per annum;

[fol. 351] And it further appearing that by order dated the 22nd day of December, A.D., 1952, the said County Judges Court, in and for Palm Beach County, Florida, authorized the said Elwyn L. Middleton, as Guardian, to receive the income from the said trusts, and directed that the said Guardian account for the same, and further provided that the bond in the sum of One Hundred Thousand Dollars (\$100,000.00) given by said Guardian was sufficient to cover the income and the amounts of money coming into his hands as Guardian as aforesaid;

And it further appearing that said bond is sufficient in amount to comply with the provisions of Title 12, Sec. 3709 of the Del. Code of 1953.

And it further appearing that a certificate showing the appointment of the said Elwyn L. Middleton as Guardian for the said Dorothy B. R. Stewart, has been filed in accordance with the provisions of Section 3097 of the Revised Code of Delaware of 1935 pertaining to foreign trustees for insane or weak-minded persons;

It is, on motion of William H. Foulk, Esquire, attorney for petitioner,

Ordered that the said Delaware Trust Company and Wilmington Trust Company be and each of them hereby is authorized to pay over unto Elwyn L. Middleton, Guardian for the said Dorothy B. R. Stewart, the income from

the trusts created by agreements of William H. Donner, dated August 19, 1940, and March 19, 1932, respectively, of which Delaware Trust Company and Wilmington Trust Company are the respective trustees, as the same shall from time to time accrue and become payable; and that the said Elwyn L. Middleton, Guardian appointed as aforesaid, is hereby authorized to receive the same and transfer the income to the State of Florida, wherein the said guardian was duly appointed; and

[fol. 352] It Is Further Ordered that the said Delaware Trust Company be and it hereby is further authorized to pay over unto the said Elwyn L. Middleton, Guardian for the said Dorothy B. R. Stewart, the income from the trust created by agreement dated June 1, 1943, by and between Dorothy B. R. Stewart and Delaware Trust Company, as Trustee, as the same shall from time to time accrue and become payable; and that the said Elwyn L. Middleton, Guardian appointed as aforesaid, is hereby authorized to receive the same and transfer the said income to the State of Florida, wherein the said Guardian was duly appointed, but that the said Delaware Trust Company be and it hereby is directed not to pay over any of the principal of said trust to the said Elwyn L. Middleton without the further order of this Court; and

It Is Further Ordered that notice of this order be forthwith given to Delaware Trust Company and Wilmington Trust Company, and to that end the Register in Chancery is hereby directed to forward a certified copy of this order to each of said companies by registered mail, return receipt requested; and

It Is Further Ordered, that the costs of this proceeding, which are hereby taxed in the sum of Nine and 00/100 Dollars (\$9.00), be paid by Delaware Trust Company, Trustee, out of any income held by it for the benefit of Dorothy B. R. Stewart before paying such income over to the said Elwyn L. Middleton.

Collins J. Seitz, Chancellor.

[fol. 353]

ATTACHMENT TO ORDER

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTYSTATE OF DELAWARE,
NEW CASTLE COUNTY, ss.:

I, Robert A. Stevenson, Register of the Court of Chancery of the State of Delaware, in and for New Castle County, do hereby certify that the foregoing is a true and correct copy of the Petition for Order Authorizing Transfer of Money to Foreign Trustee filed in this Court on the 27th day of March, A. D. 1953 and Certifications annexed thereto showing the Appointment of Elwyn L. Middleton Guardian for Dorothy B. R. Stewart under the seal of the County Judges Court in and for Palm Beach County, Florida, and showing that Elwyn L. Middleton is invested with the care and management of the Estate of Dorothy B. R. Stewart, a mentally ill person, as the same is on file and remains of record in this Court.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court at Wilmington, this 5th day of October, A. D. 1955.

Robert A. Stevenson, Register in Chancery.

(SEAL)

[fol. 354] Clerk's Certificate to foregoing transcript omitted in printing.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 531

ELIZABETH DONNER HANSON, as Executrix and Trustee
under the Last Will of Dora Browning Donner, deceased,
Plaintiff,

v.

WILMINGTON TRUST COMPANY, et al., Defendants.

AFFIDAVIT OF PAUL D. LOVETT

STATE OF DELAWARE,
NEW CASTLE COUNTY, ss.:

Be It Remembered that on this 24th day of October, 1955, personally appeared before me, the undersigned, a Notary Public of the State and County aforesaid, Paul D. Lovett, who being by me duly sworn, did depose and say:

1. That he is a Vice-President and in charge of the Trust Department of the Delaware Trust Company.
2. That the Delaware Trust Company is the Trustee under a certain trust agreement made on November 26, 1948 between Elizabeth Donner Hanson, party of the first part, and Delaware Trust Company, party of the second part, for the benefit of Donner Hanson and others, and the Delaware Trust Company is likewise the Trustee under [fol. 356] a trust agreement made on November 26, 1948 between Elizabeth Donner Hanson, party of the first part, and Delaware Trust Company, party of the second part, for the benefit of Joseph Donner Winsor, which said two trust agreements are marked Exhibits A and B and are attached to the affidavit of the affiant verified on November 12, 1954 and filed in the above cause.
3. That affiant has caused the records of the Delaware Trust Company to be examined for the purpose of ascertaining whether either Donner Hanson or Joseph Donner

Winsor has filed with the Delaware Trust Company as Trustee any instrument or instruments in writing for the purpose of exercising the powers of appointment conferred upon Donner Hanson and Joseph Donner Winsor, respectively, by paragraph 3 of each of the aforementioned two trust agreements, and affiant states that no such instrument in writing has ever been filed with the Delaware Trust Company by either Donner Hanson or Joseph Donner Winsor.

Paul D. Lovett

Sworn to and subscribed before me the day and year first above written.

Elizabeth O'Neill, Notary Public.
(SEAL)

[fol. 357] ATTACHMENT TO STIPULATION

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE .
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 531

ELIZABETH DONNER HANSON, as Executrix and Trustee
under the Last Will of Dora Browning Donner, deceased,
Plaintiff,

v. :

WILMINGTON TRUST COMPANY, et al., Defendants.

AFFIDAVIT OF C. KENNETH BAXTER

COUNTY OF PHILADELPHIA,
COMMONWEALTH OF PENNSYLVANIA, ss.:

Be It Remembered that on this 24th day of October, 1955, personally appeared before me, the undersigned, a Notary Public for the County and Commonwealth aforesaid, C. Kenneth Baxter, who being by me duly sworn did depose and say:

1. From 1931 until September 1940 I was employed as an investment adviser by William H. Donner, the husband

of Dora Browning Donner, and/or members of his family and/or companies owned or controlled by them. I thereupon became employed as Secretary and Treasurer of Donner Estates, Inc. and from time to time thereafter I served as Secretary and Treasurer of Donner Estates, Inc. as Vice-President and since January 1, 1950 as President. Pertinent facts pertaining to Donner Estates, Inc. are set [fol. 358] forth in paragraph 2 of my affidavit verified November 12, 1954 and filed in the above cause.

2. From 1931 until the present my activities and business and personal relationship with William H. Donner and members of his family were such that I became intimately familiar with the terms of the numerous trusts created by William H. Donner and by certain members of his family, as well as the marital and blood relationships which existed in the Donner family, and the ages of certain members thereof. As a result I am able to state that Curtin Winsor, Jr. and Joseph Donner Winsor are sons of Elizabeth Donner Hanson by a former husband, Curtin Winsor. Curtin Winsor, Jr. was born on April 28, 1939 and Joseph Donner Winsor was born on September 18, 1941. Since prior to January 1, 1954 until the present time, Curtin Winsor, Jr. and Joseph Donner Winsor have resided in Florida with their mother. Donner Hanson is the son of Elizabeth Donner Hanson by her present husband, Benedict Hanson. Donner Hanson was born on October 14, 1948 and since prior to January 1, 1954 until the present time has resided in Florida with his mother. It is my belief that neither Joseph Donner Winsor, Curtin Winsor, Jr. or Donner Hanson have ever had issue. Because of my contacts and relations with members of the Donner family, I am certain that I would have heard of the fact if either of said persons had had issue.

C. Kenneth Baxter